2956.

SUPREME COURT OF THE UNITED STATES.

No. 83.

ALEXANDER J. MARSHALL, PLAINTIFF IN ERROR,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT UNITED STATES, FOR THE DISTRICT OF MARYLAND.

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The United States of America, district of Maryland, to wit:

At a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday of November, in the year of our Lord one thousand eight hundred and fifty-two; present, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States; John Glenn, judge of the Maryland district; Z. Collins Lee, esquire, attorney; Thomas H. Kent, (of Jos.,) esq., marshal; Thomas Spicer, clerk; among other were the following proceedings, to wit:

ALEXANDER J. MARSHALL
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY.

Be it remembered, that heretofore, to wit, on the twenty-second day of August, in the year of our Lord one thousand eight hundred and fifty, the said Alexander J. Marshall, by Thomas Parkin Scott and Henry Winter Davis, his attorneys, prosecuted and sued forth, out of the circuit court here, the writ of the United States of America of capias ad respondendum, directed to the marshal of the Maryland district, in the words and of the tenor following, to wit:

Writ.

The United States of America, district of Maryland, to wit, to the marshal for Maryland district, greeting:

[SEAL.] We command you that you summon the Baltimore and Ohio Railroad Company a body corporate, by act of the general assembly of Maryland, if it shall be found in your district, and that it so taken you safe keep, so that you have its body before the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, at the United States court-room in the city of Baltimore, on the first Monday in November next, to answer unto Alexander J. Marshall, a citizen of the State of Virginia, in a plea of trespass on the case, &c. Hereof fail not at your peril, and have you then and there this writ.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and forty-nine.

T. P. S. Issued 22d August, 1853.

THO. SPICER, *Cl'k circ't ct.*

At which mentioned first Monday in November, in the year of our Lord one thousand eight hundred and fifty, being the day of the return of the aforegoing writ, comes into the circuit court here the said Alex-

ander J. Marshall, by his attorneys aforesaid, and the marshal of the Maryland district aforesaid, to wit, Thomas H. Kent, (of Jos.,) gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

"Cepi. THOS. H. KENT, (of Jos.,) *U. S. Marshal.*"

Rule security for costs.

And the said Baltimore and Ohio Railroad Company, being called, appears in court here, by John H. B. Latrobe and Reverdy Johnson, its attorneys. And the said Baltimore and Ohio Railroad Company, by its attorneys aforesaid, prays that the said Alexander J. Marshall may be ruled to give security for costs in the plea aforesaid; whereupon it is ruled, by the court here, that the said Alexander J. Marshall give security for the costs of suit, in the plea aforesaid, by the first Monday in April next; and it is said to the said Alexander J. Marshall that, if he does not give security for costs by the day aforesaid, judgment will be rendered against him by default. The same day is given to the said Baltimore and Ohio Railroad Company, there, &c.

Security for costs entered.

Whereupon comes here into court in his proper person, Joseph C. Wilson, of the said district, and undertakes for the said Alexander J. Marshall, that if the said Alexander J. Marshall in the plea aforesaid shall be non-suited, or from maintaining his action aforesaid shall be precluded, then the said Alexander John Marshall shall pay unto the aforesaid Baltimore and Ohio Railroad Company all such costs and charges by it about its defence in this part sustained, which shall be adjudged unto the said Baltimore and Ohio Railroad Company by the court here, or that he, the said Joseph C. Wilson, will do the same for him.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon is continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-one, comes again into the circuit court here, as well the said Alexander J. Marshall by his attorneys aforesaid, as the Baltimore and Ohio Railroad Company [by] its attorneys aforesaid.

And the said Alexander J. Marshall, by his attorneys aforesaid, declared against the Baltimore and Ohio Railroad Company in the plea aforesaid, in form following, to wit:

Declaration.

In the circuit court of the United States, for the district of Maryland.

DISTRICT OF MARYLAND, *to wit:*

The Baltimore and Ohio Railroad Company, who are a body corporate by the act of the general assembly of Maryland, were sum-

moned to answer Alexander J. Marshall, who is a citizen of the State of Virginia, in a plea of trespass on the case, and so forth.

And thereupon the plaintiff complains that heretofore, to wit, on the 12th day of December, in the year 1846, to wit, in the district of Maryland, the said defendants, being desirous of obtaining from the general assembly of Virginia, at the session thereof, then being held at the city of Richmond, in Virginia, the right to construct the continuation of their railroad through the territory of Virginia, connecting the Baltimore and Ohio railroad with the Ohio river, did then and there retain and employ the said plaintiff as their agent and attorney to attend at the city of Richmond aforesaid, during the said session of the said general assembly of Virginia, in order to superintend and further any application or other proceeding which might be made or had before the said general assembly to obtain the said right of way through the said State of Virginia on behalf of the defendants, and to take all proper measures for that purpose; and in consideration that the plaintiff would accept such retainer, and undertake the agency aforesaid, and attend in Richmond aforesaid, and superintend and further any such application or proceeding as aforesaid, it was by and between the said plaintiff and the said defendants then and there agreed, that in case a law should be obtained from the said general assembly of Virginia, during the then session thereof, authorizing the said defendants to extend their road through the said State of Virginia, to a point on the Ohio river as low down the river as Fishing creek, and the stockholders of the said Baltimore and Ohio Railroad Company should afterwards accept such law as might be obtained, and determine to act under it; or in case a law should be passed, authorizing the construction of a railroad from any point on the Ohio river, above the mouth of *of* the Little Kenawha river, and below the city of Wheeling, with authority to intersect with the present Baltimore and Ohio railroad, and the stockholders of the Baltimore and Ohio Railroad Company should determine to accept and adopt such law, or should become the proprietors thereof, and prosecute their road according to its provisions; then, in either of said cases, the said defendants should pay the plaintiff the sum of fifty thousand dollars in the six per cent. bonds of the said Baltimore and Ohio Railroad Company at their par value, and to be made payable at any time within five years; but it was further provided, that the plaintiff, if no such law as aforesaid should pass, or if any law which might be passed should not be accepted or adopted, or used by the stockholders aforesaid, should not be entitled to receive any compensation whatsoever for the services he might render in the premises, or for any *or for any* expense he might incur in obtaining such a law or otherwise.

And thereafter, to wit, on the 11th day of February, in the year 1847, to wit, at the State of Maryland aforesaid, in consideration that the plaintiff would accept the retainer and agency aforesaid, and superintend and further any such application as aforesaid at Richmond, it was further agreed, by and between the plaintiff and defendants,

that in case a law should be obtained from the said general assembly of Virginia, at the session thereof aforesaid, authorizing the said Baltimore and Ohio Railroad Company to extend their road through the State of Virginia, to a point on the Ohio river as low down the river as Fish creek, and the stockholders of said company should determined to accept such law as might be obtained, and determine [to] act under it in the manner contemplated by the said agreement of the 27th December, 1846, then the said defendants should pay to the plaintiff the said sum of fifty thousand dollars in the six per cent. bonds of the said defendant at their par value, and payable at any time within the period of five years, according to the terms and subject to the aforesaid proviso of the said original agreement of the 27th day of December, in the year 1846; and the said agreement being so made as aforesaid, afterwards, to wit, on the day of , in the year of , in consideration thereof, and that the said plaintiff, at the special instance and request of the said defendant had then and there undertaken and promised the said defendant to perform and fulfil the said agreement in all things on the plaintiff's part to be performed and fulfilled; the defendants undertook, and then and their faithfully promised the plaintiff, to fulfil and perform the said agreement in all things on the said defendant's part and behalf to be performed and fulfilled.

And the said plaintiff avers, that in pursuance of the said retainer and employment by the said defendants, afterwards, to wit, on the said day of December, in the year 1846, and at divers other days thereafter, the said plaintiff did in fact attend at the city of Richmond during the aforesaid session of the said general assembly of Virginia as the agent and attorney of the defendants, in order to further and superintend, and that he did then and there superintend and further the application and proceedings before the said general assembly of Virginia to obtain the said right of way for and on behalf of the defendants through the said State of Virginia; and that the said plaintiff did in fact take all proper measures for that purpose at and during the said session of the said general assembly of Virginia. And the plaintiff avers, that the said general assembly of Virginia began and held their session, in the said agreement mentioned, on the 7th day of December, 1846, and closed their said session upon the 23d day of March, 1847, at the city of Richmond aforesaid, in Virginia aforesaid; and that during the said session, and upon a certain day thereof after the making the said promises and undertakings, and while the plaintiff was superintending and furthering the application and proceedings pending before the said general assembly to obtain the right of way aforesaid, for and on behalf of the defendants, to wit, on the 6th day of March, in the year 1847, the said general assembly of Virginia did pass a certain law, entitled "An act to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia," which said act of the general assembly of Virginia is of the purport and tenor, and to the effect following, that is to say—

1st. Be it enacted by the general assembly, That the Baltimore and

Ohio Railroad Company be, and they are hereby, authorized to complete their road through the territory of this Commonwealth so as to pass from a point in the ravine of Buffalo creek, at or near the mouth of Pile's fork, to a depôt to be established by said company on the northern side of Wheeling creek, in the city of Wheeling, in Ohio county, by such route as, upon minute estimates to be made after full examinations and instrumental surveys of the feasible or practicable routes, shall appear to be the cheapest upon which to construct, maintain, and work said railroad, which estimates shall be made on like principles and plans, in like manner, and upon as great respective amounts of trade and travel as were adopted and employed in the comparative estimates of the company's chief engineer, laid before the meeting of stockholders of said company, held in Baltimore on the 12th day of July, 1845: Provided, that said railroad shall not be made to enter the ravine of the Ohio river at any point further south than the mouth of Fish creek, in Marshall county: And provided, that if the said railroad, by the cheapest route to the city of Wheeling, which shall not enter the ravine of the Ohio river at any point south of Grave creek, in Marshall county, shall appear from the estimates to be made as aforesaid, to be more costly to construct, maintain, and work than it would be by the route passing into the ravine of the Ohio river at or near the mouth of Fish creek, and thence to the city of Wheeling; and if, when the difference of probable cost between said two routes shall be ascertained as aforesaid, the city of Wheeling shall agree to pay to the said railroad company such difference of cost by the time said railroad shall be completed and opened for transportation to said depôt in Wheeling, (which payment it shall be lawful for the said city of Wheeling to provide for and make,) then the said railroad company are hereby required to locate and construct their said railroad so that in passing to said depôt in Wheeling it shall not enter the ravine of the Ohio river at any point south of Grave creek.

2. Be it further enacted, That to secure to the said city of Wheeling the benefit of the western terminus, all parts of the said railroad between the Monongahela river and said terminus shall be opened for the transportation of freight and passengers simultaneously, and the aggregate charge for toll and transportation upon freight and passengers respectively shall be the same between Baltimore and any point on the said road within a direct distance of five miles from the Ohio river, as between Baltimore and Wheeling.

3. Be it further enacted, That nothing in this act contained shall be so construed as to entitle said company to any subscription on the part of this Commonwealth to the stock of said company by virtue of any act heretofore passed, and especially by virtue of the several acts passed March 28, 1837, and April 2, 1838, concerning the said company; which said provisions in said acts are hereby declared to be no longer in force, and of no effect.

4. Be it further enacted, That full right and privilege is hereby reserved to the Commonwealth, or to any citizen thereof, or any persons

or companies who may hereafter be so authorized by the general assembly, to connect or intersect with the said Baltimore and Ohio railroad, or any branch thereof, either of the said portion of said railroad now constructed or to be constructed, at any point or points thereof within this Commonwealth, any railroad, canal, or other road for transportation leading to or from said Baltimore and Ohio railroad, or any branch thereof from or to any other part or parts of this Commonwealth, and that all reasonable facilities for the full and free enjoyment of the *of the* benefit of such connexion or connexions shall at all times be afforded by the said Baltimore and Ohio Railroad Company; and upon failure to receive and transport any such freight and passengers according to their turn, upon payment or tender of the lawful or customary tolls, or to furnish the other usual and necessary facilities, the said Baltimore and Ohio Railroad Company shall be liable to all the penalties prescribed or provided for offences or defaults of like kind in the 22d section of the said general act, entitled "An act prescribing certain general regulations for the incorporation of railroad companies," to be recovered in the manner therein provided, or by any action, suit, or motion in any of the courts of this Commonwealth having jurisdiction of the subject.

5. Be it further enacted, That the said Baltimore and Ohio Railroad Company shall, within six months after the passage of this act, establish a depôt at the Chesapeake and Ohio Canal basin, situate between lock number 32 and the Shenandoah outlet lock in said canal, or as near thereto as practicable; and shall also allow switches to be put in, with the sidelings and branch tracks, to be connected from time to time with said switches, to be constructed at the expense of the said Chesapeake and Ohio Canal Company, for the purpose of accommodating and facilitating, in the most ready and economical manner practicable, the transfer of passengers and goods, produce, merchandise, and property of any description whatever from the said railroad to the canal, and to warehouses that may from time to time be there erected by said canal company, or individuals, or others, for the accommodation of the trade on the canal, and from the canal and said warehouses to the said railroad; and that the said Baltimore and Ohio Railroad Company shall also establish, in like manner, a depôt at the Chesapeake and Ohio Canal basin at Cumberland; and also at such other point or points within the limits of this Commonwealth, along or near the line of said Baltimore and Ohio railroad, as may hereafter, by act of the general assembly of this Commonwealth, be prescribed, and shall allow all necessary switches with sidelings and branch tracks to be connected from time to time with the said switches as aforesaid, to be constructed at the expense of said Chesapeake and Ohio Canal Company, for the purposes aforesaid.

6. Be it further enacted, That said company shall be subject to the provisions of the act of assembly passed on the 11th day of March, 1837, establishing general regulations for the incorporation of railroad companies, with respect to that portion of their road or other improve-

ments now or hereafter to be constructed within this Commonwealth, so far as the same are properly applicable: Provided, That said Baltimore and Ohio Railroad Company shall not be permitted to charge for transportation or travel to or from Baltimore, from or to any point distant more than five miles in a direct line from the Ohio river, more in the aggregate than for transportation or travel from Wheeling to Baltimore, or from Baltimore to Wheeling, respectively; nor more in the aggregate from any depôt west of Harper's Ferry to Baltimore, or from Baltimore to such depôt, than from any other depôt more distant from Baltimore to Baltimore, or from Baltimore to such last mentioned depôt.

7. Be it further enacted, That the stock, property, and profits of said company, so far as the same may be or accrue within this Commonwealth, shall be subject to general taxation, in like manner and on the same footing with other similar companies within this State: Provided, however, That said taxing power shall not be exercised until and unless the nett income of the said Baltimore and Ohio railroad shall exceed six per centum per annum upon their capital invested.

8. Be it further enacted, That the general assembly hereby reserves to itself the power of hereafter altering, amending, or modifying any or any part of the provisions of this act: Provided, That the rights of property and franchises acquired under this act, and the free use and enjoyment of their rights and privileges, as granted by this or any other former act now in force, shall not be taken away or impaired by any such further act of legislation.

9. Be it further enacted, That the city of Wheeling may subscribe to the capital stock of said railroad company such sum, not exceeding one million of dollars, and upon such terms as may be agreed upon between the council of said city and said railroad company.

10. Be it further enacted, That the said railroad to be constructed through the territory of Virginia, shall reach or cross the Taggart's Valley river at or within three miles of the mouth of Three Fork creek, in the county of Taylor.

11. Be it further enacted, That as a condition upon which the powers and privileges upon which this act is granted, the said Baltimore and Ohio Railroad Company shall accept of this act within six months, and enter upon the construction of their road herein before authorized within three years, and complete the same within twelve years after the passage of this act.

12. This act shall be in force from and after the passage thereof.

And the plaintiff further avers, that afterwards, to wit, on the day of July, in the year 1847, by a certain agreement then and there made between the said defendants and the said city of Wheeling, it was stipulated and agreed—

1st. That the said city of Wheeling should procure for the said defendants, free from expense to said defendants, suitable and sufficient ground, to be approved by the said defendants, for a depôt, at which to discharge and receive passengers and freight, not exceeding two

acres, on the north side of Wheeling creek, in said city, at any time that might best suit the convenience of said city, previous to the commencement of the construction of the Baltimore and Ohio railroad adjacent to said city.

2d. To secure to said Baltimore and Ohio Railroad Company the right of way through said city to the depôt provided for by the preceding article, free of cost to said railroad company, and the right to pass to and from said depôt by means of locomotive engines, moving within said city at a rate of speed not exceeding four miles per hour, unless a greater rate of speed shall be expressly assented to by the authorities of said city.

3. Whenever the Baltimore and Ohio railroad shall be completed from Cumberland to the point of its crossing the Monongahela river, and said company should be prepared and declare their intention to commence the construction of their said road from thence to the city of Wheeling, then the city of Wheeling should subscribe to the capital stock of said railroad company five thousand shares, amounting to the sum of five hundred thousand dollars, which *said* be paid to said company in such instalments as said company through its directors should demand, either in bonds of said city, guaranteed by the State of Virginia, bearing interest at the rate of six per centum per annum, payable semi-annually, and the principal payable at the end of twenty years from the date of said bonds; or, in case said city should not procure said guarantee, such payment should be made in money.

4. The city of Wheeling should waive the right secured to her by the second proviso of the first section of the act of the general assembly of Virginia, of March 6, 1847, as to the selection of the route between the mouth of Pile's fork and the city of Wheeling, and would not exercise said right without the express assent of the directors of the said Baltimore and Ohio Railroad Company.

5. That such agreement, executed in proper and binding form, should be transmitted to the president of the Baltimore and Ohio Railroad Company, and should be binding on said city so soon as the stockholders of the Baltimore and Ohio Railroad Company should have accepted the law of the general assembly of the State of Virginia, of March 6, 1847, entitled "An act to authorize the said Baltimore and Ohio Railroad Company to construct the extension of their road through the territory of Virginia," and agreed to prosecute at the earliest convenience of said company the construction of said road from Cumberland to the city of Wheeling; but if for good causes appearing to them sufficient, the general assembly of Virginia should grant further time to the company to complete said road, then such extended time should be considered as included within the terms of said agreement.

And, finally, it is agreed between the parties that if from any cause it should so happen that the said road be not made within the time so prescribed or extended, then the damages sustained by the city of Wheeling should be considered as liquidated, and comprising, 1st. The subscription which might be paid, with interest thereon, from the

time of its receipt by said company. 2d. The actual cost of depôts bought under the first article of the said agreement, with interest thereon from the time of its payment by said city, and upon the payment of such damages the said depôts should become the property of the said railroad company. And that the committee of the Baltimore and Ohio Railroad Company negotiating said agreement, should use the proper means to convene a meeting of the stockholders of said company at as early a day as practicable, after notice of the said agreement by the city of Wheeling, and recommend to said stockholders the acceptance of the conditions aforesaid, on which the agreement aforesaid on the part of the city of Wheeling should become obligatory on said city, it being the intention of the parties to the said agreement, among other things, to secure to the city of Wheeling the practical benefits of the western terminus of the Baltimore and Ohio railroad according to the provisions of said law. It was further understood that the instrumental surveys and estimates necessary to determine the route to be adopted between Pile's fork of Buffalo and said city should be made, and the route decided on, as soon after the ratification of the said agreement by the parties thereto, as the said company should find it convenient to cause the same to be made; which said agreement was ratified, approved, and confirmed by the council of the city of Wheeling on the said 10th day of July, 1847, to wit, at the city of Wheeling, in Virginia aforesaid, and sealed with the corporate seal of the said city, and delivered then and there to the said Baltimore and Ohio Railroad Company.

And the said plaintiff avers, that afterwards, to wit, on the ——— day of August, in the said year 1847, to wit, at the city of Baltimore, at a general meeting of the stockholders of the Baltimore and Ohio Railroad Company, held at the said city of Baltimore, the said agreement between the said city of Wheeling of the one side, and the said Baltimore and Ohio Railroad Company of the other side, was ratified by the said stockholders of the said Baltimore and Ohio Railroad Company and accepted; and the said law passed by the general assembly of Virginia on the 6th day of March, in the year 1847, entitled "An act to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia," was also, at the said meeting of the said stockholders of the Baltimore and Ohio Railroad Company by the said company accepted, according to the provisions of the 11th section of the said law; by reason of which ratification of said agreement and acceptance of said law by the said Baltimore and Ohio Railroad Company, the said agreement became, and was thenceforth, binding and obligatory upon the said city of Wheeling and the said defendants.

And the plaintiff avers, that by the said agreement the said city of Wheeling elected and bound itself, in the event that the said railroad, by the cheapest route to the city of Wheeling, which should not enter

the ravine of the Ohio river at any point south of Grave creek, in Marshall county, should appear upon the estimates directed by the law aforesaid to be more costly to construct, maintain, and work, than it would be by the route passing into the ravine of the Ohio river, at or near the mouth of Fish creek, and thence to the city of Wheeling, not to agree to pay to the said Baltimore and Ohio Railroad Company the difference of cost between the said routes; and not to require the said company to locate their said railroad so that in passing to said depôt in Wheeling, in the act mentioned, it should not enter the ravine of the Ohio river at any point south of Grave creek.

And the plaintiff further avers, that afterwards, to wit, on the day of , in the year 1848, in pursuance of the said law, and under its provisions, the said defendants caused full examinations and instrumental surveys to be made of the feasible and practicable routes for the construction of their said road through the territory of Virginia, under said law, and minute estimates thereon to be made of the cost to construct, maintain, and work said road on said several routes, on like principles and plans, and in like manner, and upon as great respective amounts of trade and travel as were adopted and employed in the comparative estimates of the company's chief engineer, laid before the meeting of the stockholders of said company, held in Baltimore, on the 12th day of July, 1845; and that upon such estimates and instrumental surveys, it appeared that the cheapest route upon which to construct, maintain, and work said railroad through the territory of Virginia, under and according to said law, touched the Ohio river at a point as low down the river Ohio as Fish creek, in the agreement between the plaintiff and defendants mentioned; and that by the said surveys and estimates, the difference of probable cost between the two routes, by Grave creek and Fish creek, in the first section of said law mentioned, was ascertained and made known to the city of Wheeling.

And the plaintiff avers, that the said city of Wheeling has not agreed to pay to the defendants such difference of cost by the time said railroad shall be completed and opened for transportation to the said depôt in the city of Wheeling, according to the first section of said law. And therefore the plaintiff says, that a law was obtained from the general assembly of Virginia, at its session aforesaid, authorizing the said defendants to extend their road through the State of Virginia to a point on the Ohio river as low down the river as Fish creek; and that the said Baltimore and Ohio Railroad Company have accepted the said law, and determined to act under it. Nevertheless, the said defendants, not regarding their promises aforesaid, have not, though often requested by the said plaintiff, to wit, on the day of , in the year , and at divers other times, yet paid nor delivered to the said plaintiff the said sum of fifty thousand dollars in the six per cent. bonds of the said *of the said* Baltimore and Ohio Railroad Company, at their par value, payable at any time within the period of five

years, or any part thereof, but so to do have hitherto refused, and still do refuse, to the damage of the plaintiff one hundred thousand dollars.

2d count. And whereas, also, the said defendants afterwards, to wit, on the day of , at aforesaid, had become, and was, indebted to the plaintiff in the further sum of one hundred thousand dollars for work, labor, care, and diligence of the plaintiff, before that time done, performed, and bestowed, for the said defendants, as an attorney and agent for the said defendant, upon the retainer, and at the special instance and request of the said defendants, in superintending and furthering divers applications and proceedings by and on behalf of the said defendants before the general assembly of Virginia, at the session thereof begun on the seventh day of December, 1846, and ended on the 25th day of March, 1847, for the purpose of obtaining the right for the said defendants to construct and continue the Baltimore and Ohio railroad through the territory of Virginia to the Ohio river, and for drawing, writing, and preparing, and printing divers papers, arguments, and representations, in and about the said application and proceedings for the defendants, and at their like special instance and request; and, being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, to wit, at aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money in this count mentioned; yet the said defendants have not paid the said sum of money to the said plaintiff, nor any part thereof, though often requested so to do; but to pay the same have always refused, and still do refuse, to the damage of the said plaintiff in the sum of one hundred thousand dollars; and thereupon he brings suit, &c.

HENRY WINTER DAVIS,
For plaintiff.

Rule plea.

And thereupon, on motion of the said Alexander John Marshall, by his attorneys aforesaid, it is ruled by the court here, that the said Baltimore and Ohio Railroad Company answer to the declaration aforesaid of the said Alexander J. Marshall, in the plea aforesaid, or judgment by the court here will be entered against him in default thereof. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-one, comes again into the circuit [court] here, as well the said Alexander J. Marshall, by his attorneys aforesaid, as the said Baltimore and Ohio Railroad Company, by its attorney aforesaid. And the said Alexander J. Marshall, by his attorneys aforesaid, files in the circuit court here a specification of his grounds of claim in the words following, to wit:

In the circuit court of the United States, for the district of Maryland.

ALEXANDER J. MARSHALL
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY.

Grounds of Claim.

The plaintiff, in pursuance of the agreement of counsel heretofore made, specifies as the grounds of his claim:

I—1. The contract between the plaintiff and defendant for the payment and delivery to the plaintiff of the sum of fifty thousand dollars, in the six per cent. bonds of the defendant at their par value, upon the terms and conditions specified, and to be found in the resolution passed at a meeting of the committee of correspondence, appointed to take charge of the general subject in regard to measures for obtaining the right of way through the States of Virginia and Pennsylvania, on the 12th of December, 1846; and the further resolution of the said committee, passed on the 18th of January, 1847; and in the letter of Louis McLane to the plaintiff, dated 18th January, 1847; and in the letters of the plaintiff to the said Louis McLane, of the 9th of February, 1847; and the reply of the said Louis McLane thereto, of the 11th February, 1847.

2. The performance of the said contract by plaintiff's attendance at Richmond, during the session of the legislature of Virginia, of 1846, 1847, in order to superintend and further any application or other proceedings to obtain the right of way through the State of Virginia, on behalf of the defendant, and to take all proper measures for that purpose.

3. The happening of the contingencies whereon said compensation was payable, by the passing of the law by the legislature of Virginia, of the 6th March, 1847, and the acceptance of said law, and the acting under it by the defendant, by which law, upon the election of the city of Wheeling not to pay to the company the difference of cost between the Grave creek and Fish creek routes, as specified in the first section of said act, or upon the failure of said city to agree to pay such difference of cost, according to said first section, the defendants were authorized to extend their [road] through Virginia, to a point on the Ohio river as low down as Fish creek.

II. The contract to be collected from all the correspondence between the plaintiff and Louis McLane, president of the Baltimore and Ohio Railroad Company, between the 12th day of December, 1846, and the 6th day of March, 1847, touching the employment and agency of the plaintiff by the defendants in superintending and furthering the applications and proceedings by or on behalf of the defendants, to obtain the right of way for the defendants through the State of Virginia to the Ohio river, all which correspondence is now in the possession and knowledge of the defendants.

III. An implied contract for reasonable compensation for work and labor, care and diligence applied, and money paid, laid out, and expended by the plaintiff for the defendants, at their request, in furthering and superintending as their agent or counsel the proceedings before the legislature of Virginia during the session of 1846–'47, by or on behalf of the defendants to obtain the right of way through Virginia to the Ohio river.

On which three several and distinct grounds the plaintiff rests his claim, and insists on a verdict in his favor.

WILLIAM SCHLEY,
HENRY WINTER DAVIS,
For plaintiff.

And the said Baltimore and Ohio Railroad Company, by its attorneys aforesaid, files in the circuit court here its notice of defence in the words following, to wit:

In circuit court, United States, Maryland district.

ALEXANDER J. MARSHALL
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY.

Notice of defence.

The defendants in the above cause having received notice of the plaintiff's grounds of claim, give the following notice of defence:

1. That the agreement sought to be enforced by the plaintiff, admitting his ability to make it out by legal proof to the extent of his pretensions, was an agreement contrary to the policy of the law, and which cannot be sustained.

2. That, admitting the said agreement to be a valid one, which the courts would enforce, yet the plaintiff is not entitled to recover, because he failed to accomplish the object for which it was entered into.

3. That the law of Virginia, which was accepted by the defendants after it had been modified by the waiver of the city of Wheeling, as mentioned in the plaintiff's notice, was not obtained through the efforts of the plaintiff, but against his strenuous opposition, and furnishes him no ground for his present claim.

4. That there was a final settlement between the plaintiff and defendants, after the passage of the Virginia law aforesaid, which concludes him on this behalf.

JOHN H. B. LATROBE,
R. JOHNSON,
For defendants.

And the parties aforesaid, by their attorneys aforesaid, file in the circuit court here an agreement, in the words following, to wit:

No. 31, trials, Nov. T. 51. In circuit court of the United States, in and for the Maryland district.

Agreement.

ALEXANDER J. MARSHALL
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY.

It is agreed that this case shall be tried on the pleadings as they now stand, with the understanding that all errors in the pleadings shall be released; and either party shall be at liberty to give in evidence any matter which would be admissible in evidence under any state of pleadings: Provided, that the plaintiffs shall specify, by a brief notice, to be filed in the case at least ten days before the trial, the grounds of his claim; and if the defendant shall rely on any special matter of defence, notice thereof shall be briefly given, by filing a specification thereof in the cause at least five days before the trial.

WM. SCHLEY, *for plaintiff*,
JNO. H. B. LATROBE, *for defendants.*

Thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by order of the court here, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two, comes again into the circuit court here as well the said Alexander J. Marshall, by his attorneys aforesaid, as the said Baltimore and Ohio Railroad Company, by its attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty, comes again into the circuit court here as well the said Alexander J. Marshall, by his attorneys aforesaid, as the said Baltimore and Ohio Railroad Company, by its attorneys aforesaid.

Plea—Non-assumpsit.

And the said Baltimore and Ohio Railroad Company, by its attorneys aforesaid, defends the force and injury when, &c., and says that it did not assume upon itself, in manner and form as the aforesaid Alexander J. Marshall against it hath complained, and of this it puts itself upon the country. And the said Alexander John Marshall in like manner, and so forth. Therefore let a jury thereon appear before the court here immediately, by whom, and so forth, who neither, and so forth, to recognise, and so forth, because as well, and so forth.

Issue.

Whereupon, for trying the issue aforesaid, it is ordered by the court here that twenty persons, from the panel of petit jurors returned to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot; and thereupon the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists; thereupon the remaining twelve persons being called come, to wit:

Jury.

William P. Patterson, Pierson Adreon, Benedict Boon, David A. McCrea, David F. Hammitt, John A. Steiner, Lewis E. Pontier, William A. Wampler, Victor Holmes, George W. Ward, James W. Collins, Philemon Griffith.

Verdict.

Who, being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said Baltimore and Ohio Railroad Company did not undertake and promise in manner and form as the said Alexander J. Marshall within against it hath complained.

Judgment.

Therefore it is considered by the court here that the said Alexander J. Marshall take nothing by his declaration aforesaid, but that he be in mercy, &c., for his false clamor; and that the said Baltimore and Ohio Railroad Company go thereof without day, &c. And it is also considered by the court here that the said Baltimore and Ohio Railroad Company recover against the said Alexander J. Marshall the sum of twelve dollars and thirty-five cents, by the court here unto it, the said Baltimore and Ohio Railroad Company, on its assent adjudged for its costs and charges by it about its defence in this behalf laid out and expended, and that it have thereof its execution against the said Alexander J. Marshall, &c.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said Alexander J. Marshall, by his attorneys aforesaid, tendered to the court here the following bills of exception, which were, by the court here, signed and sealed, and which are in form following, to wit:

In the circuit court of the United States.

ALEXANDER J. MARSHALL
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY.

First bill of exceptions.

On the trial of the issues in this cause, the plaintiff, to maintain the issue on his part, read in evidence to the jury the contract between the plaintiff and the defendant, which is in the words and figures following:

Resolution, 12*th Dec'r*, 1846.

OFFICE OF THE BALTIMORE AND OHIO RAILROAD CO.,
December 12, 1846.

At a meeting of the committee of correspondence, appointed to take charge of the general subject in regard to measures for obtaining the right of way through the States of Virginia and Pennsylvania, there were present Messrs. Harwood, Cooke, Hoffman, and O'Donnell; the President also attended.

On motion, it was resolved, that the President be and is hereby authorized, in addition to the agent heretofore employed by the committee for the same purpose, to employ and make arrangements with other responsible persons to attend at Richmond during the present session of the legislature, in order to superintend and further any application or other proceeding to obtain the right of way through the State of Virginia on behalf of this company, and to take all proper measures for that purpose; that he also be authorized to agree with such agent or agents, in case a law shall be obtained from the said legislature, during its present session, authorizing the company to extend their road through that State to a point on the Ohio river as low down the river as Fishing creek; and the stockholders of this company shall afterwards accept such law as may be obtained, and determine to act under it; or, in case a law should be passed authorizing the construction of a railroad from any point on the Ohio river above the mouth of the Little Kenawha and below the city of Wheeling, with authority to intersect with the present Baltimore and Ohio railroad; and the stockholders of the Baltimore and Ohio Railroad Company shall determine to accept and adopt said law, or shall become the proprietors thereof, and prosecute their road according to its provisions, then, in either of the said cases, the President shall be and is authorized to pay to the agent or agents whom he may employ in pursuance of this resolution, the sum of fifty thousand dollars, in the six per cent. bonds of this company, at their par value, and to be made payable at any time within the period of five years.

Resolved, That it shall be expressly stipulated in the agreement with the said agent or agents employed pursuant to this resolution, and as a condition thereof, that if no such law as aforesaid shall pass, or if any law that may be passed shall not be accepted or adopted, or used by the stockholders, the said agents shall not be entitled to receive any compensation whatever for the service they may render in the premises, or for any expense they may incur in obtaining such law or otherwise.

JAMES HARWOOD,
WILLIAM COOKE,
SAM'L HOFFMAN,
COLUMBUS O'DONNELL,
LOUIS McLANE, *President.*

The committee of correspondence in regard to procuring the right of way through Virginia met on this 18th day of January, 1847, at the

house of Judge Harwood, the chairman. Present, Mr. Harwood, Mr. Cooke, and Mr. O'Donnell. The President also attended.

A letter from Mr. A. J. Marshall, the company's agent at Richmond, dated the 16th instant, was submitted to the committee.

Resolution of 18th January, 1847.

On motion it was unanimously resolved, that the right of Mr. Marshall to the compensation under the existing contract shall attach upon the passage of a law at the present session of the legislature, giving the right of way to Parkersburg or to Fishing creek, either to the Baltimore and Ohio Railroad Company, or to an independent company: Provided this company accept the one, and adopt and act under the other, as contemplated by the contract.

JAMES HARWOOD,
WILLIAM COOKE,
COLUMBUS O'DONNELL,
LOUIS McLANE, *President*.

January 19, 1847. Mr. Hoffman not having been present at the meeting yesterday, but coming to the railroad office to-day, and having read the foregoing minute, approved the same.

SAM'L HOFFMAN.

And also the further modification of said contract contained in the letter of the plaintiff to Louis McLane, of the 9th February, 1847, and the reply of said McLane of the 11th February, 1847, written by order of the company, which are in the following words:

Letter from A. J. Marshall to Louis McLane, 9th February, 1847.

9th February.

DEAR SIR: Sheffy reported this morning a route to Wheeling different from the prescribed route; utterly unacceptable. You will not in fact be allowed to touch the Ohio at Fish creek, but if a cheaper route can be pointed out, (you not to judge of the cheapness,) you are to be forced to take it. I heard the bill read only, and need not tell you Mr. Hunter says it is more objectionable than the present law. Mr. Green has promised to get a copy of the bill and send it to you to-night.

We anticipated, from the information given us, that the Wheeling compromise would have given you Fish creek as [a] terminus. We had rallied our strength on Fishing creek and Hunter's compromise. We had taken ground that Fish creek would certainly defeat the road, as you would not accept it. Parties were organized on this issue, and many who had voted against us before had determined to vote with us on this issue. I think we should have carried it. Many members wished to end this agitating question. It jostles and endangers every

interest in the State. They would pass any reasonable law that would quiet this clamor, and at the same time would embody a fair concession to Wheeling. The extent to which a concession to Wheeling would be compatible with the acceptance of the law was the point at issue.

We insisted that a law making Fish creek the terminus would be rejected, and for this reason we could have carried Fishing creek.

In this state of things we get the proceedings of your stockholders on Monday. Their resolutions respond alone to the present laws. They emphatically reject them, and have no doubt that the "prescribed route" to Wheeling will never do. At the same time we get the "American," in which you are reported to say you hope to get an acceptable terminus above Fishing creek. I have taken the ground that this paper has mistaken and misrepresented you.

I have no doubt that a firm stand on your part, stating that Hunter's compromise would be accepted, and that no point higher up would be accepted, would have settled this question by a decided vote. I do not believe, under present state of our information, you could even get Fish creek as a terminus. The argument of Wheeling, that you will go to that city if you can do no better, is greatly strengthened. They say that all you require is a change of the "prescribed" route, and an assurance you can do no better.

I fear Sheffy's bill will be pressed to-morrow. If it is, I fear it will pass; it will be impossible to resist the belief that if Virginia is firm, and will modify the route, you will go to Wheeling. It is necessary you should speak plain, and speak at once. Say you cannot extend your road unless permitted to strike the Ohio at least as low as Fishing creek. If you will accept Fish creek, and will be positive that you will not go higher, I think you can get it. This, of course, would cut me out, but this cannot be helped. I wish to get an ultimatum from you, for I assure you you will be confined to Wheeling otherwise.

Please write to Mr. Hunter; his letter can be exhibited. Take a firm stand, and we may yet retrieve the day. Even if the bill gets to the senate it may be amended.

I am, dear sir, with great respect,

Your obedient servant, &c.,

(Signed) A. J. MARSHALL.

Letter from L. McLane to A. J. Marshall, 11th February, 1847.

February 11, 1847.

DEAR SIR: My letter enclosed will be a full, and I hope satisfactory, answer to your letter, and I trust the explanations of the misreport of the American will have been previously received, and checked the advantage temporarily given to our opponents. Mr. Green, in a letter last night, suggests that, if under the delusions prevailing at the time the bill of Mr. Sheffy should have passed, it could be amended in the senate, and sent back to be considered under our subsequent explana-

tions. I sincerely hope neither this nor any other advantage will have escaped you. I trust you will spare no [pains] to get us something that we can consider an attempt to amend hereafter.

Yours, most respectfully,

L. McLANE.

BALTIMORE, *February* 11, 1847.

To A. J. MARSHALL, esq.

DEAR SIR: Your letter of the 9th reached me at too late an hour last night to afford me an opportunity of consulting the committee, and without that opportunity I could not give the reply I wished. It would be difficult for me to be more explicit than I have been in regard to Fish creek, and I am sorry that you or any one else should require more than the resolution unanimously adopted by the stockholders. That resolution is not confined, as you seem to suppose, to the law. It, on the contrary, does and was intended most explicitly to reject in toto the route prescribed in the present law; and as Fish creek could only be approached by that route, or some part of it, as certified in Mr. L's letter forwarded to Mr. Hunter, that point is effectually and necessarily excluded. I am still free to assure you that, in the opinion of the committee, the stockholders will not, under any circumstances, construct their road to Wheeling, without the privilege of a terminus at some point on the Ohio river not higher up than Fishing creek; and it is absolutely certain that the compromise proposed by Mr. Sheffy will under no circumstances, or for any inducement whatever, be assented to. To this effect I wrote to-day to Mr. Hunter.

At the same time that I am free to give you these assurances, the committee, after full reflection, are unwilling to assume the responsibility of preventing by their act the passage of a law, if nothing better can be had, tendering to the stockholders the option of rejecting or accepting it, which would confine their main stem to Fish creek by such route as the company might select. While the committee are persuaded that such a law would not be accepted by the stockholders, they know that there are a large number of them who believe that, if such a law should now be tendered to them, they would be thereby introduced into the State, and could hold it under consideration, if nothing more, for the chance of getting it amended at another session, and we could not therefore be responsible for depriving them of that option. In this crisis, if after the utmost exertion nothing better can be done, if it were practicable to pass Mr. Hunter's substitute with Fish creek instead of Fishing creek, we would not undertake to prevent the passage of such a law. We would then refer the whole question to the stockholders; and I am authorized to say that, every thing else failing, if such a law as is indicated pass, and the stockholders adopt it, and act under it in the manner contemplated by the contract, your compensation shall apply to that as to any other aspect of the case. The committee do this from the sense they entertain of the labor

and exertions you have already made; and believing that the fruit of these and your further exertions, if in form to be acceptable to the stockholders, should also enure to your benefit. They do not suppose this was needed to insure your continued exertions in the present crisis. It ought to be clearly understood, however, that Sheffy's compromise can in no event be brought within this view, and, as it regards that, the committee are willing to be responsible for preventing even its tender to the stockholders; that or any thing like it is wholly impracticable. It is worse even than the present law; it would involve the employment of Knight's route, even under greater disadvantages, and would be promptly and forever rejected.

I am, dear, sir, very respectfully, your obedient servant,

LOUIS McLANE.

No one sent me a copy of Sheffy's bill, and I did not see it until this morning. I think you will find my letter to Mr. Hunter to-day full upon the points you suggest, and only regret I could not reply last night.

And also the law of the legislature of Virginia, passed 6th March, 1847, which is in the following words:

Act March 6th, 1847.

An act to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia. Passed 6th March, 1841.

Be it enacted by the general assembly, That the Baltimore and Ohio Railroad Company be, and they are hereby, authorized to complete their road through the territory of this Commonwealth, so as to pass from a point in the ravine of Buffalo creek, at or near the mouth of Pile's fork, to a depôt to be established by said company on the northern side of Wheeling creek, in the city of Wheeling, in Ohio county, by such route as upon minute estimates, to be made after full examinations and instrumental surveys of the feasible or practicable routes, shall appear to be the cheapest upon which to construct, maintain, and work said railroad; which estimates shall be made on like principles and plans, in like manner, and upon as great respective amounts of trade and travel, as were adopted and employed in the comparative estimates of the company's chief engineer, laid before the meeting of the stockholders of the said company, held in Baltimore, on the 12th day of July, 1845; provided that said railroad shall not be made to enter the ravine of the Ohio river at a point further south than the mouth of Fish creek, in Marshall county; and provided that if the said railroad, by the cheapest route to the city of Wheeling, which shall not enter the ravine of the Ohio river at any point south of Grave creek, in Marshall county, shall appear, from the estimates to be made as aforesaid, to be more costly to construct, maintain, and work, than it would be by the route passing into the ravine of the Ohio river

at or near the mouth of Fish creek, and thence to the city of Wheeling: and if, when the difference of probable cost between said two routes shall be ascertained as aforesaid, the city of Wheeling shall agree to pay to said railroad company such difference of cost, by the time said railroad shall be completed and opened for transportation to said depôt in Wheeling, (which payment it shall be lawful for the said city of Wheeling to provide for and make,) then the said railroad company are hereby required to locate and construct their said railroad, so that, in passing to said depôt in Wheeling, it shall not enter the ravine of the Ohio river at any point south of Grave creek.

2. Be it further enacted, that to secure to the said city of Wheeling the benefits of the western terminus, all parts of the said railroad between the Monongahela river and said terminus, shall be opened for transportation of freight and passengers simultaneously; and the aggregate charge for toll and transportation, upon freight and passengers respectively, shall be the same between Baltimore and any point on said road, within a direct distance of five miles from the Ohio river, as between Baltimore and Wheeling.

3. Be it further enacted, that nothing in this act contained shall be so construed as to entitle said company to any subscription on the part of this Commonwealth to the stock of said company, by virtue of any act heretofore passed, and especially by virtue of the several acts passed March 28, 1837, and April 2d, 1838, concerning the said company, which said provisions, in said acts, are hereby declared to be no longer in force and of no effect.

4. Be it further enacted, that full right and privilege is hereby reserved to the Commonwealth, or to any citizen thereof, or any persons or companies who may hereafter be authorized by the general assembly to connect or intersect with the said Baltimore and Ohio Railroad, or any branch thereof, either of the said portion of said railroad now constructed, or to be constructed, any point or points thereof within this Commonwealth, any railroad, canal, or other road for transportation, leading to or from the said Baltimore and Ohio Railroad, or any branch thereof, from or to any other part or parts of this Commonwealth; and that all reasonable facilities for the full and free enjoyment of the benefit of such connexion or connexions shall at all times be afforded by the said Baltimore and Ohio Railroad Company; and upon failure to receive and transport any such freight and passengers, according to their turn, upon payment or tender of the lawful or customary tolls, or to furnish other usual and necessary facilities, the said Baltimore and Ohio Railroad Company shall be liable to all the penalties prescribed and provided for offences or defaults of like kind in the *twenty* section of the said general act, entitled "An act prescribing certain general regulations for the incorporation of railroad companies," to be recovered in the manner therein provided, or by any action, suit, or motion, in any of the courts of this Commonwealth having jurisdiction of the subject.

5. Be it further enacted, that the said Baltimore and Ohio Railroad

Company shall, within six months after the passage of this act, establish *at* depôt at the Chesapeake and Ohio Canal basin, situated between lock number thirty-two and the Shenandoah outlet lock in said canal, or as near thereto as may be practicable; and shall also allow switches to be put in, with sidelings and branch tracks, to be connected, from time to time, with said switches, to be constructed at the expense of the said Chesapeake and Ohio Canal Company, for the purpose of accommodating and facilitating, in the most ready and economical manner practicable, the transfer of passengers and goods, produce, merchandise, or property of any description whatever, from the said railroad to the canal, and to warehouses that may, from time to time, be there erected by said company, or individuals, or others, for the accommodation of the trade on the canal, and from the canal and said warehouses to the said railroad; and that the said Baltimore and Ohio Railroad Company shall also establish, in like manner, a depôt at the Chesapeake and Ohio Canal basin at Cumberland; and also at such other point or points within the limits of this Commonwealth, being along or near the line of the Baltimore and Ohio Railroad as may hereafter, by act of the general assembly of this Commonwealth, be prescribed; and shall allow all necessary switches, with sidelings and branch tracks, to be connected from time to time with the said switches, as aforesaid, to be constructed at the expense of the said Chesapeake and Ohio Canal Company for the purposes aforesaid.

6. And be it further enacted, that said company shall be subject to the provisions of the act of assembly, passed on the 11th of March, 1837, establishing general regulations for the incorporation of railroad companies, with respect to that portion of their road or other improvements now or hereafter to be constructed within this Commonwealth, so far as the same are properly applicable; provided, that said Baltimore and Ohio Railroad Company shall not be permitted to charge for transportation or travel, to or from Baltimore, *from* to any point distant more than five miles in a direct line from the Ohio river, more, in the aggregate, than for transportation or travel from Wheeling to Baltimore, or from Baltimore to Wheeling respectively; nor more, in the aggregate, from any depôt west of Harper's Ferry to Baltimore, or from Baltimore to such depôt, from any other depôt more distant from Baltimore to Baltimore, or Baltimore to such last mentioned depôt.

7. Be it further enacted, that the stock, property, and profits of said company, so far as the same may be, or accrue within this Commonwealth, shall be subject to general taxation in like manner and on the same footing with other similar companies within this State; provided, however, that said taxing power shall not be exercised until and unless the nett income of the said Baltimore and Ohio Railroad shall exceed six per centum per annum upon their capital invested.

8. Be it further enacted, that the general assembly hereby reserves to itself the power of hereafter altering, amending, or modifying any, or any part, of the provisions of this act; provided, that the rights of property and franchises acquired under this act, and the free use and

enjoyment of their rights and privileges as granted by this or any other former act now in force, shall not be taken away or impaired by any such further act of legislation.

9. Be it further enacted, that the city of Wheeling may subscribe to the capital stock of said railroad company such sum not exceeding one million of dollars, and upon such terms as may be agreed upon between the council of said city and said railroad company.

10. Be it further enacted, that the said railroad to be constructed through the territory of Virginia shall reach or cross Tygart's Valley river at or within three miles of the mouth of Three Fork creek, in the county of Taylor.

11. Be it further enacted, that, as a condition upon which the powers and privileges of this act are granted, the said Baltimore and Ohio Railroad Company shall accept this act within six months, and enter upon the construction of the continuation of their road herein before authorized within three years, and complete the same within twelve years after the passage of this act.

12. This act shall be in force from and after the passage thereof.

Which law it was agreed was duly accepted by the defendant on the 25th of August, 1847.

And also an agreement between the city of Wheeling and the defendant, in the following words:

Agreement between the city of Wheeling and the defendant.

Memorandum of an agreement made the 6th day of July, 1847, between the committee of the city of Wheeling, and the committee of the Baltimore and Ohio Railroad Company.

Whereas on the sixth day of July, A. D. 1847, it was agreed, between S. Brady, M. Nelson, D. M. Edgington, James S. Wheate, and Daniel Lamb, a committee on behalf of the city of Wheeling, and Samuel Hoffman, J. W. Patterson, Thomas Swan, T. Parkin Scott, and Louis McLane, a committee on behalf of the Baltimore and Ohio Railroad Company, as follows, to wit:

The committee of the city of Wheeling, on their part, will recommend to the authorities of the said city to agree, in proper and binding form, as follows, to wit:

1. To procure for said company, free from expense to said company, suitable and sufficient ground, to be approved by the company, for a depôt at which to discharge and receive passengers and freight, not exceeding two acres, on the north side of Wheeling creek, in said city, at any time that may best suit the convenience of the said city, previous to the commencement of the construction of the Baltimore and Ohio railroad adjacent to said city.

2. To secure to said company the right of way through said city to the depôt provided for by the preceding article free of cost to said railroad company, and the right to pass to and from said depôt, by means of locomotive engines, moving within the limits of said city at a rate of

speed not exceeding four miles per hour, unless a greater rate of speed shall be expressly assented to by the authorities of said city.

3. Whenever the Baltimore and Ohio railroad shall be completed from Cumberland to the point of its crossing the Monongahela river, and said company shall be prepared and declare their intention to commence the construction of their said road from thence to the city of Wheeling, then the city of Wheeling shall subscribe to the capital stock of said railroad company five thousand shares, amounting to the sum of five hundred thousand dollars, which shall be paid to said company in such instalments as said company through its directors shall demand, either in bonds of said city, guaranteed by the State of Virginia, bearing interest at the rate of six per centum per annum, payable semi-annually, and the principal payable at the end of twenty years from the date of said bonds; or, in case said city shall not procure said guaranty, such payment shall be made in money.

4. The city of Wheeling shall waive the right secured to her by the second proviso of the first section of the act of the general assembly of Virginia, of March 6th, 1847, as to the selection of the route between the mouth of Pile's fork and the city of Wheeling, and will not exercise said right without the express assent of the directors of the said Baltimore and Ohio Railroad Company.

5. Such agreement, executed in proper and binding form, shall be transmitted to the President of the Baltimore and Ohio Railroad Company, and shall be binding on said city so soon as the stockholders of the Baltimore and Ohio Railroad Company shall have accepted the law of the general assembly of the State of Virginia, of March 6, 1847, entitled "An act to authorize the said Baltimore and Ohio Railroad Company to construct the extension of their road through the territory of Virginia," and agreed to prosecute at the earliest convenience of said company the construction of said road from Cumberland to the city of Wheeling; but if, from good causes appearing to them sufficient, the general assembly of Virginia shall grant further time to the company to complete said road, then such extended time shall be considered as included within the terms of this agreement.

And, finally, it is agreed between the parties hereto, that if, from any cause it should so happen that the said road be not made within the time so prescribed or extended, then, and in such case, the damages sustained by the said city of Wheeling shall be considered as liquidated, and comprising—

1st. The subscription which may be paid, with interest thereon from the time of its reception by said company.

2. The actual cost of depôts bought under the first article of this agreement, with interest thereon, from the time of its payment by the said city; and upon the payment of such damages, the said depôts shall become the property of the said railroad company.

And the committee of the Baltimore and Ohio Railroad Company agree, on their part, to use the proper means to convene a meeting of the stockholders of said company at as early a day as practicable after

being duly notified of the ratification of the agreement on the part of the city of Wheeling, and to recommend to said stockholders when so convened the acceptance of the conditions above referred to, on which the agreement aforesaid on the part of the city of Wheeling is to become obligatory on said city, it being the intention of the parties to this agreement, among other things, to secure to the city of Wheeling the practical benefits of the western terminus of the Baltimore and Ohio railroad, according to the provisions of the said law.

It is understood that the instrumental surveys and estimates necessary to determine the route to be adopted between Pile's fork of Buffalo and said city, shall be made, and the route decided upon, as soon after the ratification of the above proposed agreement by the city of Wheeling and the Baltimore and Ohio Railroad Company, as the said company shall find convenient to cause the same to be made.

And whereas, at a meeting of the council of the city of Wheeling, held on Saturday, the 10th day of July, 1847, the said agreement as above recited was submitted, and having been read and duly considered, it was by the said council "Resolved, That said agreement be ratified, approved, and confirmed, and that the same shall be binding and obligatory upon the city of Wheeling, upon the terms and conditions in said agreement contained, and that the mayor, for and on behalf, and under the common seal, of said city, execute said agreement; and that after the same shall have been recorded in the register of contracts, it be forwarded to the President of the Baltimore and Ohio Railroad Company."

Now, therefore, I, William W. Shriver, mayor of the city of Wheeling, in pursuance of the resolution of the council of said city, herein before recited, do hereby execute the said agreement, in the name and for and on behalf of the said city of Wheeling.

And the report of the chief engineer of the defendant to the defendant, making the survey contemplated in the 1st section of the law aforesaid, in the following words:

Report of the chief engineer.

Report of the chief engineer of the Baltimore and Ohio Railroad Company upon the routes by Fish and Grave creeks, made under the act of July 6th, 1847.

ENGINEER'S OFFICE,
BALTIMORE AND OHIO RAILROAD,
BALTIMORE, *February* 15, 1849.

THOMAS SWAN, esq., president.

SIR: I have the honor to submit the following report upon the several routes for the Baltimore and Ohio railroad, between the mouth of Pile's fork of Buffalo creek, in Marion county, Virginia, and the city of Wheeling.

These routes have been surveyed in compliance with the act of the Virginia legislature, passed March 6th, 1847, and the agreement of

this company with the city of Wheeling of July 6th, 1847. The law, in its first section, enacts: "That the Baltimore and Ohio Railroad Company be, and they are hereby, authorized to complete their road through the territory of this Commonwealth, so as to pass from a point in the ravine of Buffalo creek, at or near the mouth of Pile's fork, to a depôt, to be established by said company, on the northern side of Wheeling creek, in the city of Wheeling, in Ohio county, by such route as, upon minute estimates to be made, after full examinations and instrumental surveys of the feasible or practicable routes, shall appear to be the cheapest to construct, maintain, and work said railroad; which estimates shall be made upon like principles and plans, in like manner, and upon as great respective amounts of trade and travel, as were adopted and employed in the comparative estimates of the company's chief engineer, laid before the meeting of the stockholders of the said company, held in the city of Baltimore, on the 12th day of July, 1845; provided that said railroad shall not be made to enter the ravine of the Ohio river at any point further south than the mouth of Fish creek, in Marshall county; and provided, that if the said railroad, by the cheapest route to the city of Wheeling, which shall not enter the ravine of the Ohio river at any point south of Grave creek, in Marshall county, shall appear, from the estimates to be made as aforesaid, to be more costly to construct, maintain, and work, than it would be by the route passing into the ravine of the Ohio river, at or near the mouth of Fish creek, and thence to the city of Wheeling; and if, when the difference of probable cost shall be ascertained as aforesaid, the city of Wheeling shall agree to pay to said railroad company such difference of cost, by the time the said railroad shall be completed and opened for transportation to said depôt in Wheeling, (which payment it shall be lawful for the said city of Wheeling to provide for and make,) then the said railroad company are hereby required to locate and construct their said railroad, so that, in passing to said depôt in Wheeling, it shall not enter the ravine of the Ohio river at any point south of Grave creek."

The country between the mouth of Pile's fork and the city of Wheeling having been carefully examined, prior to and during the progress of the instrumental surveys, but three routes were found to present inducements to such surveys, and they have accordingly been confined to them.

These three routes had been reconnoitred, in the years 1844 and 1847, by the engineer acting on behalf of the authorities of Wheeling, and by myself, afterwards, in his company; and the features of the ground, between the points above mentioned, are of so marked a character as to leave no doubt that all the "practicable or feasible" lines referred to by the law, are embraced in those that have been now surveyed. A map, exhibiting all the lines, has been prepared, and an inspection of it will show them in one view. They are described as follows:

1. The Grave creek route by Hart's run.
2. The Grave creek route by Big run.
3. Fish creek route.

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These designations, being the same as heretofore employed in my report of June 26th, 1847, are retained, being as descriptive perhaps as any that could be used. The routes are traced in detail, as below:

1st. The Grave creek route, by Hart's run, commences at the mouth of Pile's fork of Buffalo creek, which it ascends a distance of ten miles to the head of the right hand, or principal fork, at Glover's low gap, with grades not exceeding $26\frac{4}{10}$ feet per mile, until, within $1\frac{3}{4}$ miles of the summit, the grade increases to $52\frac{8}{10}$ feet per mile. The line is, in general, direct; but there are several abrupt bends in the stream, which has to be crossed five times in the distance, by bridges, of an aggregate length of 660 feet. The ridge is passed by a tunnel 400 feet long, and the route thence descends Church's fork of Fish creek seven miles; for the first $1\frac{3}{8}$ miles by a grade of $52\frac{8}{10}$ feet per mile, and afterwards by grades not over $26\frac{4}{10}$ per mile to the junction of the Long Drain fork of Fish creek; and thence about three-fourths of a mile further, to the point near Squire Little's house, at which this route diverges from the Fish creek route. The upper part of Church's fork is direct, and of easy graduation; but the bends of the lower part are so sudden as to require three tunnels, of a total length of 476 feet, and eight bridges, of a total length of 1,068 feet. The line then immediately begins to ascend by the slopes of the south fork of Fisk creek and the ravine of Board Tree run, with an extreme grade of $72\frac{8}{10}$ feet per mile, to the summit of the ridge between the south and north forks of Fish creek, which it reaches in about $2\frac{3}{4}$ miles, and passes by a tunnel 2,450 feet long; and thence descends (with grades $79\frac{2}{10}$ feet per mile and under) by the ravine of Raccoon run, and the slopes and valley of the north fork of Fish creek, to the mouth of Hart's run.

This section of the route is very costly, embracing much heavy excavation and embankment, besides the tunnel. A bridge, over the north fork of Fish creek, of 215 feet in length, is also required near its junction with Hart's run. The route then ascends Hart's run (crossing it half a mile from its mouth by a bridge of 66 feet long) upwards of two miles, to the mouth of Four Mile run, and up the latter four miles more, with grades of $79\frac{2}{10}$ feet per mile, and less, to the head of one of its branches at the ridge dividing the waters of Fish creek and Grave creek. This part of the line is indirect, and somewhat costly. The ridge is passed by a tunnel 1,250 feet long, and the route descends thence $1\frac{5}{8}$ miles, with a grade of $79\frac{2}{10}$ feet per mile, by the slopes of Welling's run and the south fork of Grave creek, to the flats of the latter stream, which it crosses once by a bridge 30 feet long, and thence pursues to the confluence of the north with the south forks of the creek, and to a junction with the Big run route to be next described. The route then descends the valley of Grave creek with grades of $39\frac{6}{10}$ feet per mile and under, to the Ohio river, and to a junction with the Fish creek route, near the upper end of the flats of Grave creek, about half a mile below Kate's rock, a distance of nearly eighteen miles. The line (of some five miles) across the flats is very direct, and passes immediately east of Elizabeth Town, the county seat. Another line was

surveyed upon the west side of Elizabeth Town, and between it and the village of Moundsville, but was found longer, and so much more expensive, as to cause its rejection. The section of the route between the forks of Grave creek and the Ohio, excepting the crossing of the flats, is very much curved, and costly in construction on account of the numerous bridgings of the stream, which has to be crossed no less than twenty-three times in a distance of about fourteen miles.

The total length of the bridges, of spans varying to one hundred feet, is 2,585 feet, or a little less than one-half mile. There is one tunnel, 414 feet in length, through the bend first above Benjamin Sheppard's, and several deep cuts at other points. From the junction with the Fish creek route the line ascends the bank of the Ohio to Wheeling, $8\frac{3}{4}$ miles, the terminating station standing on the north bank of Wheeling creek, as required by the law. On this section the grades slightly ascend and descend at $26\frac{4}{10}$ feet per mile, and less. The ground is, in general, of the most favorable character, the narrows immediately above the flats, being the only difficulty, and that a moderate one. The entire length of the route is $59\frac{1}{10}$ miles. The total rise and fall 1,724 feet; extreme grade in each direction $79\frac{2}{10}$ feet per mile; number of degrees of curvature 9,483; length of straight line, $26\frac{6}{10}\frac{0}{0}\frac{8}{0}$ miles, and of curved line, $32\frac{4}{10}\frac{2}{0}\frac{2}{0}$ miles; shortest radius of curvature, 600 feet; estimated cost of construction with two tracts of railway, depôts, water stations, and right of way, $3,076,808 34, or at the rate of $52,044 per mile.

2d. The Grave creek route, by Big run, commences at the mouth of Pile's fork, and is coincident with the route by Hart's run for about $17\frac{3}{4}$ miles, to a point thee-fourths of a mile west of the mouth of Long drain, where that route departs from the Fish creek route. The present line thence continues down the south fork of Fish creek to its junction with the north fork, a distance of about $10\frac{7}{8}$ miles, with grades not exceeding $26\frac{4}{10}$ feet per mile. This section, on the south fork of Fish creek, is, for the most part, crooked and rather expensive. Two tunnels, of a total length of 809 feet, at Beaver dam and Cabin point, and one bridge, 132 feet long, are required. From the forks of Fish creek the route descends the main creek (crossing, by a bridge 280 feet long, from the left to the right bank) to a point about a mile above the mouth of Big run, and thence begins to ascend the creek hill, and passes into and up that run through a narrow and crooked ravine, requiring, in the first two miles, twelve bridges and a tunnel, 112 feet in length. Afterwards the valley becomes more open and favorable for the remainder of the ascent to the ridge at the head of Chambers's branch of the run. The extreme grade is $79\frac{2}{10}$ feet per mile, and is used for most part of the distance of $4\frac{1}{2}$ miles between the mouth and the head of the run. The ridge which here divides the waters of Fish creek and Grave creek, is passed by a tunnel 2,100 feet in length. The line then descends at $72\frac{2}{10}$ feet per mile by the slopes of Fish creek hollow, about a mile to the south fork of Grave creek, and continues its descent to the flats of the latter, and to a junction with the line by Hart's run, about

three-fourths of a mile above the mouth of the north fork. From thence the route is coincident with the route by Hart's run, already described, to Wheeling. The section of the route between the forks of Fish creek and the forks of Grave creek is very indirect and costly, chiefly on account of the difficulties near the mouth of Big run, and the passage of the ridge. The whole length of this route is $63\frac{8}{10}\frac{5}{0}\frac{5}{0}$ miles; the total rise and fall upon it 1,522 feet; extreme grade $79\frac{2}{10}$ feet per mile; number of degrees of curvature, 10,513; length of straight line, $27\frac{5}{10}\frac{7}{0}\frac{1}{0}$ miles, and of curved line, $36\frac{1}{10}\frac{1}{0}\frac{4}{0}$ miles; shortest radius of curvature, 600 feet; estimated cost of construction, with two tracts of railway, depôts, water stations, and right of way, $3,018,230 21, or at the rate of $47,393 per mile.

3d. The Fish creek route begins with the others at the mouth of Pile's fork, and is coincident with both the first and second routes, to the point above described, near the mouth of Long drain, and with the second, to a point about two-thirds of a mile below the forks of Fish creek, whereat the Big Run route diverges. Thence the present route descends (with grades of 26 4-10 feet per mile and under) the valley of Fish creek $19\frac{1}{2}$ miles to the Ohio river, crossing the creek in three places, viz., at Sheppard's, Ruckman's, and the Rocky ford, with a total length of 872 feet of bridging, and with one tunnel 894 feet long, through the very circuitous bend between Garland's and Ruckman's. The line enters the valley of the river about a mile above the mouth of the creek, passing through a low depression in the river hill at that point. The section of the route, between the forks and the mouth of Fish creek, is very winding; but with the exception of the bridges and tunnel not expensive. From the mouth of the creek the route ascends the river $13\frac{1}{4}$ miles, with slight undulations in the grade, (of $26\frac{4}{10}$ feet per mile and under,) to a junction with the Grave creek route, as before stated. This part of the route is very favorable, the only difficult ground occurring at the narrows, immediately below Big Grave creek, and the crossing of that creek and Little Grave creek. The whole length of the route is $70\frac{1}{10}\frac{6}{0}\frac{5}{0}$ miles; the total rise and fall upon it, 838 feet; extreme grade, $53\frac{3}{10}$ feet per mile, occurring for a distance of $3\frac{1}{8}$ miles at one point only, viz., the passage of the main ridge, at Glover's; number of degrees of curvature, 10,165; length of straight line $25\frac{8}{10}\frac{9}{0}\frac{4}{0}$ miles, and of curved line $44\frac{1}{10}\frac{7}{0}\frac{1}{0}$ miles; shortest radius of curvature, 600 feet. Estimated cost of construction, with two tracks of railway, depôts, water stations, and right of way, $2,767,573 91, or at the rate of $39,357 per mile. The measured and equated distance, with the grades and curves, upon each of the three routes, are shown in the accompanying tables A 1, A 2, and A 3.

Estimates of the cost of construction.

The appended statements, numbered B 1, B 2, and B 3, in the order observed in the preceding description, exhibit in detail the estimates of the cost of construction, upon each route, between the mouth of

Long Drain and Wheeling; and statement B 4 contains the same particulars upon the part of the route common to each, between the mouth of Pile's fork and Long Drain. An examination of these will show the quantities and prices of the several kinds of work. These lines having been located, and plans prepared, and the calculations with great and equal care, and with a due sense of the responsibilities involved in the duty, may, as the undersigned believes, be relied upon as fairly exhibiting the expense of making the road upon each of the routes compared, upon the plans contemplated in the estimates and required by the law. In the estimates of the graduation and masonry, the same scale of prices was applied to each route, as far as the local circumstances of each part of the work permitted; and the differences, in the average prices on each line, are the result of the diversities in those circumstances.

The prices established for bridge superstructure, for the railway track, and for the depôts and water stations, were applied alike to each route.

The depôt buildings here contemplated, being such cheap structures only as would be indispensable upon the first opening of the road, and not including the extensive station houses and workshops, which would grow up especially at the Wheeling terminus. The cost of the right of way is derived from the reports of the agents employed to obtain it, and is shown in statement B 5.

Estimates of the cost of maintenance and working.

The appended statements, numbered C 1, C 2, C 3, show the estimated cost of maintaining the road and its appurtenances; and the statements D 1, D 2, and D 3, that of effecting the transportation of freight and passengers upon each route.

These statements apply only to that part of the routes which is beyond the point three-fourths of a mile west of the mouth of Long Drain, to which point from the mouth of Pile's fork, a distance of 17$\frac{3}{4}$ miles, all the routes are identical, and the cost of maintenance and working necessarily the same on each. The exclusion of this common part of the routes from the comparison, does not affect the result in any way, and it was so excluded, as its omission facilitated the comparison of the cost of transportation; the distance from the mouth of Long Drain to Wheeling forming a suitable stage for the day's work of a locomotive engine making a round trip over that distance, while the entire distance from the mouth of Pile's fork to Wheeling would have been too long a tour of duty.

The basis of the estimates of the cost of maintaining and working the road has been 60,000 tons of freight and 150,000 passengers per annum, required by the law, as having been used in the comparison of routes in my report of July 12, 1845, to the stockholders of the Baltimore and Ohio Railroad Company. In applying the principles of those comparisons, derived from my former report of February 14, 1838; I have given full credit to the improvements since made in the

power of the locomotive engine, and in the structure and cost of cars, and also to the reduction in the cost of fuel, due to the abundance and cheapness of mineral coal in the region through which these routes pass; all of which improvements in the economy of transportation operate in favor of the shorter but less level routes by Grave creek. The changes made (in view of experience since acquired) in the elements of the cost of maintenance of road, are also in favor of those routes. And the omission of the expense of watching wooden bridges, a large and indispensable item, although not embraced in the comparisons of the report of February 14, 1838, and of July 12, 1845, operates also greatly to the advantage of those routes, on which the extent of this description of bridging is so much the greatest that the capital equivalent to the cost of watching it would exceed that upon the other route at least from $5,500 to $6,000 per annum, or by $90,000 to $100,000 of capital, by which amounts the differences against those routes would be increased. I have omitted it because it is an element not included in the estimates of the reports referred to, and because the expense of watching might be avoided by constructing the bridges of incombustible material. If this were done, the cost of their maintenance would also be diminished, but that of their construction increased to an extent which would make the capital invested in them about the same. I will here take occasion to say that, in the comparison of the cost of both maintenance and working, the "principles and plans" of the report of February 14, 1838, have been used with the modifications proper to the change of times and places, as, in so doing, the spirit and intention of the law is carried into effect more fully than by the application of the merely approximate methods of the report of July 12, 1845, which were, however, founded upon the more exact modes of comparison of the previous report, but applied only in the way of a general average of results upon many different lines. The result of the estimates of the cost of "maintenance and working" are as follows, for the different routes, computed for the part of them between their divergence, near the mouth of Long Drain and the city of Wheeling.

1. *Grave creek route by Hart's run.*

Measured distance, $41\frac{305}{1000}$ miles; equated distance, $70\frac{845}{1000}$ miles.

Capital equivalent, at 6 per cent. interest, to cost of maintenance	$667,798
Capital equivalent, at 6 per cent. interest, to cost of working	638,310
Total for maintaining and working	$1,306,108

2. *Grave creek route by Big run.*

Measured distance, $45\frac{890}{1000}$ miles; equated distance, $71\frac{734}{1000}$ miles.

Capital equivalent, at 6 per cent. interest, to cost of maintenance	$732,541
Capital equivalent, at 6 per cent. interest, to cost of working	631,772
Total for maintaining and working	$1,364,313

3. *Fish creek route.*

Measured distance, $52\frac{270}{1000}$ miles; equated distance, $64\frac{977}{1000}$ miles.

Capital equivalent, at 6 per cent. interest, to cost of maintenance	$707,265
Capital equivalent, at 6 per cent. interest, to cost of working	620,466
Total for maintaining and working	$1,327,731

Comparison of the three routes between their points of divergence, near the mouth of Long Drain, and the city of Wheeling.

1. *Grave creek route by Hart's run.*

Measured distance, 41.305 miles; equated distance, 70.345 miles.

Cost of construction	$2,290,873
Cost of maintaining and working	1,306,108
Total capital	$3,596,981

2. *Grave creek route by Big run.*

Measured distance, 45.890 miles; equated distance, 71.784 miles.

Cost of construction	$2,232,294
Cost of maintaining and working	1,364,313
Total capital	$3,596,607

3. *Fish creek route.*

Measured distance, 52.270 miles; equated distance, 64,977 miles.

Cost of construction	$1,971,638
Cost of maintaining and working	1,327,731
Total capital	$3,299,369

Comparing first the two routes by Grave creek, we see that the Grave creek route by Hart's run is shorter than that by Big run in

measured distance, by 4.585 miles, and in equated distance, by 1.439 miles. That it is, at the same time, more costly to construct by $58,579, but less costly to maintain and work by $58,205; and, finally, more costly to construct, maintain, and work, by $374. We must reject, then, on this occasion, the Hart's run route as the more costly of the two, though by so small a difference, and take the Big run route for comparison with Fish creek route. Comparing these two last routes, we see that the Grave creek route, by Big run, is, in measured distance, 6.380 miles shorter; but, in equated distance, 6.807 miles the longer; while it is more costly to construct by $260,656, and to maintain and work by $36,582; and, finally, more costly to construct, maintain, and work, by $297,238.

Final result of the comparison of routes.

The sum, therefore, the payment of which, according to the terms prescribed by the law of Virginia, would be necessary to place the cheapest and best route by Grave creek upon an equality with the route by Fish creek, would be two hundred and ninety-seven thousand two hundred and thirty-eight dollars.

The distance and cost of construction upon the whole line between the mouth of Pile's fork and Wheeling, is as follows upon each route, with two tracks, depôts, water stations, and right of way, as before stated; and also with one track, the estimated cost per mile of single track being $10,000.

1. *Grave creek route by Hart's run.*

59.100 miles, at $52,061 per mile, (2 tracks) - -	$3,076,808
59.100 miles, at $42,061 per mile, (1 track) - -	2,485,808

2. *Grave creek route by Big run.*

63.685 miles, at $47,393 per mile, (2 tracks) - -	$3,018,230
63.685 miles, at $37,393 per mile, (1 track) - -	2,381,380

3. *Fish creek route.*

70.065 miles, at $39,357 per mile, (2 tracks) - -	$2,757,574
70.065 miles, at $29,357 per mile, (1 track) - -	2,056,924

The difference in the cost of construction upon the several routes, with two tracks, has been already stated as $58,579 in favor of the Big run, compared with the Hart's run route by Grave creek, and as $260,656 in favor of the Fish creek route, compared with the former. Consequently, the Fish creek route would be cheaper to construct, with two tracks, than the Grave creek route by Hart's run, by $319,235. With a single track, the differences would be $104,429 in favor of the Big run, compared with the Hart's run by Grave creek, and $324,456 in favor of the Fish creek route, compared with the Grave creek route by Big run. Therefore, the Fish creek route is cheaper to construct, with one track, than the Grave creek route, by Hart's run, also with one track, by $428,885.

The greater cost of the graduation, masonry, and bridging upon the shorter lines, by Grave creek, have thus more than overbalanced their savings in the cost of railway, and other items, dependent on length of line alone. It is not necessary, on this occasion, to make other comparisons between the results of the present estimates, founded upon actual locations and careful calculations, and former estimates, based only upon examinations, without the aid of instruments, than to say, that all the lines have shown themselves to be more expensive than it was supposed, as well by the engineer in the service of Wheeling, as by myself, that they would be; the extreme crookedness of the streams, and somewhat greater height of the ridges, rendering heavier work necessary to maintain the proper limits of grade and curvature upon the greater part of the lines. The former estimates, also, did not include the expensive bridge over Wheeling creek, at Wheeling, which is embraced in the present. All of the routes were located with a view to save distance, as far as consistent with true economy under the circumstances, which will attend the improvement for a considerable time after it shall be opened to its western terminus. It will be practicable, however, at some distant day, when the trade and revenue of the line will be so large and profitable, and the saving of time in the transit, and wear and tare of the road and machinery so important, to shorten the distance in the Fish creek valley some six miles, by cutting off the bends at Gorby's and Kirby's, above the forks of the creek, and at Garland's, Janney's, Kelly's, and Arnold's farms, below the forks. The first five of these bends would require as many tunnels, of an aggregate length of one mile, by which, and three additional bridges at the other points, a total saving of about the above number of miles would be made without any loss of equated distance. Such a location, however, could not be, just now, recommended, as it would involve an increase of cost incommensurate to the advantage to be gained, in the best state of the trade likely to exist for some time after the completion of the road. Upon Grave creek, it is believed that the line has been made as short as there would be ever a sufficient temptation to make it.

I am not aware that any thing further is necessary to be said, in the performance of my duty, in relation to the subject of this report, and it is therefore now respectfully submitted.

BENJ. H. LATROBE, *Chief engineer.*

And also from the journal of the house of delegates of Virginia, at the session at which the law aforesaid was passed, the following passages being the whole proceeding of the said body touching the law aforesaid at that session, viz:

Doc. No. 13.

Memorial of the city of Wheeling,

Praying that no law be passed authorizing the extension of the Baltimore and Ohio Railroad Company, or for the incorporation of any other company for that or any similar purpose.

Memorial of the city of Wheeling.

To the general assembly of Virginia, the city of Wheeling respectfully represents.

On the 25th September, 1846, a convention of some of the people of some of the counties of northern Virginia, was held at Weston, in Lewis county, where, amongst other things, it was resolved to renew the application heretofore presented to the legislature of Virginia, "to pass an act to charter a company to construct a railroad from some point on the Potomac river, above the mouth of the South branch thereof, to a point on the Ohio river, not further south than the mouth of the Little Kanawha river." At the same time, a committee was appointed by that body "to prepare a suitable memorial to the legislature to effect the object of this convention." In pursuance of these resolutions, petitions have been industriously and zealously circulated amongst the people of this section of the State. The prayer of a portion of them is in literal accordance with the terms of the resolution of the convention as quoted, whilst that of others asks "the construction of a railroad from some point on the South branch of the Potomac river, through northwestern Virginia, to the Ohio river, not below the mouth of the Little Kanawha river," a variance easily explained by reference to the peculiar interests of the locality in which each has been circulated.

Your memorialist apprehends no difficulty in ascertaining the real character of the application thus presented, however earnestly disguised by assumed names and plausible pretences; it is simply a renewal of the oft repeated application of the Baltimore and Ohio Railroad Company for authority to extend their road through the territory of this State, to some point on the Ohio river, to be by them hereafter determined, not below the mouth of the Little Kanawha river. It is unworthy of the dignity of Virginia to evade her justice by mere pretences however plausible and ingenious, or to insult her intelligence by specious reasoning upon abstract truths, which have no pertinency or application. In its real character, therefore, your memorialist must meet this application; strengthened and invigorated for the contest by a most grateful remembrance of the protection she has heretofore received—a protection she has humbly endeavored to repay by her cheerful and ready allegiance, as unwavering when disaster seemed to threaten her best and highest interests, as when she rested in assured safety from wrong and outrage.

A hurried narrative of this question will best define the position of your memorialist, and most fully vindicate the past legislation of this State. To this narrative your memorialist invokes the most rigid scrutiny. It is submitted to those who will patiently hear, thoroughly investigate, and impartially decide, and she fears not the result. Her course has ever been open, undisguised, and consistent. She has been as careful in avoiding injustice to others, as she has been zealous and

unfailing in resisting wrong and injury threatened from any source whatever.

The Baltimore and Ohio Railroad was suggested by a public meeting in the city of Baltimore in the year 1826. At that meeting the town of Wheeling was named as a probable terminus of the proposed road on the Ohio river.

On the 27th of February, 1827, the legislature of Maryland incorporated a company to construct the proposed road, under the style of the "Baltimore and Ohio Railroad Company." The object of this charter was the construction of a railroad from the city of Baltimore to some suitable point on the Ohio river, to be by the President and Directors of said company thereafter determined. On the 8th of March, 1827, the legislature of Virginia confirmed the law incorporating said company, as passed by the legislature of Maryland, with some additional provisions and conditions; and, amongst others, it was enacted, "that the said road should not strike [the] river at a point lower than the mouth of the Little Kenawha, on said river." Thus, in the very first act, the original charter, did the legislature of Virginia clearly recognise and establish the principle for which your memorialist now contends, that has been as clearly recognised and established by every law passed in relation to that company by Maryland, Pennsylvania, the United States, or [our] own State. It is this, that in making every such grant it is the right and duty of the granting power, by proper limitations and conditions, to guard its own peculiar interests, and protect any rights at the time created or then existing. This will be shown in every law hereafter referred to, and its justice and necessity fully demonstrated in every instance. The limitation of the terminus on the Ohio river was induced by a proper regard for the interests of the works of internal improvement which then were, and still are, entitled to the fostering care and protection of the State. It was cheerfully submitted to as reasonable and just, and to this day no complaint has been heard from the company of its continued imposition. The manner in which this restriction was still further limited will hereafter appear, and the triumphant vindication of your memorialist from imputed selfishness and illiberality will, by the same means, be achieved, to the clear conviction of every unprejudiced mind.

By each of these laws of Maryland and Virginia it was enacted, "that if said road shall not be commenced in two years from the passage of this act, and shall not be finished in this State in ten years from the time of the commencement thereof, then this act shall be null and void." As the construction of the road was commenced at Baltimore on the 4th of July, 1828, this charter from Virginia expired by its own limitation on the 4th July, 1838.

In February, 1828, the legislature of Pennsylvania passed a law authorizing the Baltimore and Ohio Railroad Company to construct a railroad through that State, in a direction from Baltimore to the Ohio river. This act confirmed all the rights and privileges granted to the company by Maryland and Virginia, with some conditions and restric-

tions, amongst which was the following: "That, as a condition on which this act is granted, it shall be the duty of the said company, in case the railroad aforesaid, made in this Commonwealth in pursuance of this act, shall not terminate at the Ohio river in the vicinity of Pittsburgh, to construct a lateral road simultaneously, on the same principles and plan of *of* the main railroad, and which shall connect the city of Pittsburgh with the main railroad." Thus did the State of Pennsylvania wisely seek to guard the interests of Pittsburgh, her great western emporium. By this act it was further provided, "that if the railroad or railroads by this act authorized are not finished within fifteen years from the date of this act, that then this act shall be null and void."

Under these several acts of incorporation the company was organized and went into operation. On the 20th of March, 1827, the city of Baltimore subscribed, by ordinance of that date, for $500,000 of the stock of the company. On the 3d March, 1828, the State of Maryland, by act of assembly of that date, subscribed for $500,000 of the capital stock upon certain conditions in the act mentioned; amongst which was one which required the company so to locate their road that it should strike the Potomac river at some point between the Monocacy river and the town of Cumberland, and go into the counties [of] Frederick, Washington, and Alleghany. In this, even Maryland, deeply interested as she was in the successful prosecution of this work, thought it right to prescribe the condition above recited, to secure important local interests, and thus recognised the principle before mentioned.

It is true that she released this condition by the act of 10th March, 1832. This release, however, depended upon its being ascertained by actual surveys that the road could not be located and constructed through those counties at a cost not exceeding the average cost per mile of that part of the road between the Point of Rocks and the city of Baltimore. Having, on the 25th February, 1836, authorized a subscription by the city of Baltimore to the stock of the company to the further amount of $3,000,000, the legislature of Maryland, by an act passed March 28th, 1836, extended the time allowed by the original act of incorporation for the construction of the road in that State, until the 4th July, 1843. On the 6th January, 1836, the legislature of Virginia passed an act authorizing the mayor and commonalty of the town of Wheeling to subscribe for 2,500 shares, or $250,000, of the capital stock of the company; and on the 6th March, 1836, the authority was confirmed to the city of Wheeling, in its charter, to make the same subscription. On the 4th June, 1836, the legislature of Maryland passed an act authorizing subscriptions to the capital stock of the several railroad and canal companies of the State, amounting in all to the sum of $8,000,000. Of this amount the sum of $3,000,000 was directed to be subscribed to the stock of the Baltimore and Ohio Railroad Company, upon certain conditions recited in the law; among these is the following:

"And the said treasurer shall not make any payment aforesaid for subscription to the stock of the Baltimore and Ohio Railroad Compa-

ny until a majority of the directors appointed therein on behalf of the State shall have certified to the treasurer in writing, supported by the oath or affirmation of a majority of said directors, that they sincerely believe in their certificate and statement, that with the subscription by this act authorized to be made to the said company's stock, and with the subscription which the city of Baltimore may have made by virtue of an act passed, &c.; or that independently of any subscription by any other public authority than the city of Baltimore as aforesaid, and of the cities of Pittsburgh and Wheeling, and exclusive of any loan secured to it, exclusive of all future profits and debts due by the said company on interest, the said railroad company, in their opinion, have funds sufficient to complete the said railroad from the Ohio river, by way of and through Cumberland, Hagerstown, and Boonsborough, to its present track near Harper's Ferry; and it is hereby declared to be, and made, the duty of the said company to, and they shall, so locate and construct the said road as to pass through each of said places; which certificate of said directors shall be accompanied by an estimate or estimates of one or more skilled and competent engineers, made out after a particular and minute survey of the route of said road by him or them, verified by his or their affidavit, showing that the whole cost of said work will not be greater than the amount of funds the said directors shall certify to have been received by said company, and applicable to the construction of said road; provided, that if the said Baltimore and Ohio Railroad Company shall not locate the said road in the manner provided for in this act, then, and in that case, they shall forfeit one million of dollars to the State of Maryland, for the use of Washington county."

Your memorialist has quoted this condition in the words of the law, as it explains the subsequent legislation sought by the company from Virginia, and proves the watchfulness of Maryland in guarding her important local interests.

By a law passed March 28th, 1837, Virginia agreed to subscribe $302,100 of the stock of the company, upon the conditions set forth in the law, to some one or more of which exceptions have been taken by the company. Having obtained the laws here referred to, the company proceeded to ascertain the cost of constructing their road from its then termination at Harper's Ferry, to the Ohio river at Pittsburgh and Wheeling. *The* embraced in their surveys the route prescribed by Maryland in the law of June, 1836, and also the route subsequently adopted, entering Virginia at Harper's Ferry, and continuing in this State to within about six miles of Cumberland.

By these surveys they not only ascertain the cost of the route prescribed by the Maryland law, but also that, by adopting the route through Virginia, between Harper's Ferry and Cumberland, they would save, in actual capital, the sum of $2,083,917 in construction of the road. But it must be remembered that this difference, decisive as it was, would be lessened by the $1,000,000 to be forfeited to the State of Maryland for the use of Washington county, as provided in the law of June, 1836, should the company adopt the Virginia route.

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Under such circumstances the company came before the Virginia legislature at the session commencing in December, 1837. After the history here given, the reasons inducing the proposition at that time submitted can be easily understood. After defining the route proposed to be taken from Harper's Ferry to Cumberland, and eloquently enlarging upon the great advantages to result to that part of the State traversed, and especially to Virginia's western city of Wheeling, the company proceeded in the following words:

"The proposition upon which the company hope to obtain the aid of the State is—

"First. That the State shall subscribe two-fifths of the cost of constructing the road from Harper's Ferry to the point, as designated in the surveys, about six miles east of Cumberland, through the territory of Virginia; this subscription of two-fifths to be paid by the State six months after the road is completed with a single track to Cumberland.

"Second. That the subscription shall take immediate effect, notwithstanding the postponement of the date of payment, and entitle the State, from the date of the subscription, to appoint two directors to represent her interest in the board of the company.

"Third. That the road shall be constructed to Wheeling, provided that city shall subscribe one million of dollars to the stock, in accordance with the powers lately conferred upon her by the legislature.

"It will be perceived that the company, by these terms, proffer to construct ninety-three miles of the road within the territory of Virginia, with Maryland capital, *of* the consideration that the State of Virginia, six months after the work is completed to Cumberland, contribute, by a subscription to the stock, two-fifths of the cost. It will also be perceived, that by these terms, a question, [that] has heretofore excited no little anxiety in the public mind, will be definitely settled by adopting Wheeling as one of the termini of the road."

During this same session, but prior to the submission of this proposition, upon the suggestion of the company, your memorialist applied for authority to subscribe for one million of dollars of the stock of the company, in lieu of the $250,000 previously authorized by law. This application was so made, after the assurance that your memorialist would not be required to subscribe for the full amount named, and subsequent events render it more than probable that had not the payment of the State's subscription been dependent upon the completion of the road to Wheeling instead of Cumberland, that the amount required from Wheeling would not have been so large. On the 9th March, 1836, the legislature granted to the city of Wheeling authority to subscribe for any amount of the stock of the company not exceeding one million of dollars.

In support of their application the company made the following representation to the legislature:

"This scheme acquires a claim to the friendly consideration of the State of Virginia, from another argument which is entitled to great weight. It is undoubtedly an object of a paramount concern to this

State to promote the *the* growth and prosperity of her thriving western city of Wheeling. By position, and commercial connexion, this city is destined to become a principal seat of western trade, and cannot fail, under a wise encouragement, to grow into great importance in the domestic policy of this State. Her means for the accomplishment of this end are manifestly, in many most important particulars, superior to those of Pittsburgh; and yet Pittsburgh, by the energetic and sagacious policy of Pennsylvania, has already been elevated into the rank of a great western metropolis, and will long continue to be fostered by that State as one of the most valuable of her possessions."

"To attract towards this city the commerce of Ohio and its tributaries, and to distribute that commerce for the benefit of the State, Pennsylvania has expended nearly twenty millions of capital, and she is now reaping the fruit of her public-spirited munificence, in her extended connexions through this point with the lakes and rapidly populating territories of the far west. Various railroads and canals are now in a state of progression, all tending to add to the resources, wealth, and growth of Pittsburgh; and that point, to unite with the vast and splendid works of the State, whose early foresight and vigor have already brought her the harvest of an incalculable trade."

"A just appreciation of the value of this policy might enable her to divert a large portion of this trade into her own city of Wheeling, and to distribute it to the manifest profit of the whole western and northwestern sections of her own population."

* * * * "It is not a question, whether Virginia can attract this trade to her own capital; that is manifestly impossible; but whether she can retain it in her own western city, and convey it from that city to the sea-coast by a line of transportation which, for more than one-half of its extent, passes through her domain, an effort altogether within her power by the means proposed. Pittsburgh and Wheeling are, in every sense, rivals in trade, urged forward to their utmost endeavor by an eager spirit of emulation; the first has been pushed forward in her career by the stupendous efforts of a powerful State, which has contributed to open every resource of her enjoyment; the latter, more advantageously seated, and enjoying, by nature, many elements of superior success over her competitor, has yet to receive the aid of her own State, which is equally powerful in intrinsic but undeveloped resources, and which is now presented with a conspicuous occasion to signalize her beneficence in a liberal support of her growing city of the West, by contributing to that great enterprise, which in a brief period is to put this city upon an equal footing with her *her* rival."

Such was the leading argument of the company; as subordinate to this, they offered a defined route and terminus; and as an equivalent, claimed subscriptions from the State, and Wheeling, and the renewal of their charter. From them thus came the first proposition, to limit the prior grant of their choice of terminus, on the Ohio river, for an ample and sufficient consideration. They avoided the *the* reasonable and commendable watchfulness of Virginia, in protecting the interests

of her great central improvement and other State works, by aiming at that part of the trade and travel of the great West, then and now controlled to a great extent by Pennsylvania, through the terminus of her State works at Pittsburgh. They had not then conceived the purpose, since so steadily pursued, of dividing the friends of Virginia's State works, and by aiming at a southern terminus on the Ohio river, so to lessen and impair the advantages of that great central improvement, as not merely to retard its progress, but ultimately defeat its completion. Your memorialists, in recurring to this point again, will fully develop this scheme, by reference to proofs which cannot be controverted. The proposition thus submitted and enforced by the arguments [be]fore quoted, received the approval of the legislature, and the law of the 2d April, 1838, was the result. Upon making the comparison, it will be found that the law, in all its essential and important particulars, but carries out the proposition with some few immaterial modifications. Those terms emanate from the company, without the agency of your memorialists, or of any person representing her interests. If, therefore, she has acquired rights under that law, not even those most disposed to cavil can justly or reasonably object to her zealous support of those rights, whenever assailed or questioned."

The first section of the law provides for a subscription, on behalf of the State, "of $1,058,420, being two-fifths of the estimated cost of constructing the railroad of said company through the territory of this State, between Harper's Ferry and Cumberland, in the State of Maryland: Provided, that the said sum shall not be paid until six months after the said company shall have certified and proved, to the satisfaction of said board of public works, that the said road, from Harper's Ferry west through the territory of this State, to within about six miles of Cumberland, and from thence through Cumberland to the city of Wheeling, in the county of Ohio, has been actually completed, and in operation with a single track: Provided, also, that before the subscription on behalf of this State, as aforesaid, shall be paid, the city of Wheeling, and the inhabitants of the county of Ohio, shall subscribe the amount of one million of dollars to the capital stock of said company, and prove to the satisfaction of said board of public works that the said subscription has been actually paid." There are some other conditions, but not pertinent to the present question. By the sixth section it was enacted, "that the Baltimore and Ohio Railroad Company be, and they are hereby, allowed the further time, until the 4th day of July, 1843, for the completion of that portion of their improvement to be constructed within this Commonwealth: Provided, the said company shall accept the provisions of this act, and locate their improvement accordingly."

Shortly after the passage of this law your memorialist was called upon by the company to make the subscription of $1,000,000, thus made, the condition upon which, as the company then said, "a question, which has heretofore excited no little anxiety in the public mind, will be definitely settled by adopting Wheeling as one of the termini

of the road." No remonstrance as to the amount of the subscription, no stipulation as to time or mode of constructing the road, or the comparative rates of transportation, would be entertained by the company; nothing would be received other than an immediate, absolute, and unconditional subscription to the full amount named in the law. The mode of payment, however, was so arranged as to come within the ability of your memorialist, and at the same time to answer the purpose of the company. The negotiation resulted in the passage of the ordinance of the council of Wheeling of the 31st of May, 1838, by which J. H. B. Latrobe esq., of the city of Baltimore, was authorized, in the name and on behalf of the city of Wheeling, to subscribe for ten thousand shares, or $1,000,000, of the capital stock of the Baltimore and Ohio Railroad Company, upon the following terms:

First. The amount of said subscription to be paid in the bonds of the city of Wheeling, bearing interest at the rate of five per cent. per annum, and payable in fifty years from the date of the same; said bonds to be executed and delivered at such times and in such portions as may be required by the board of directors of the said company: Provided, always, that upon the bonds so delivered the city of Wheeling shall not be required to pay interest for the period of five years from the date of said subscription, unless the road shall be sooner completed to the city of Wheeling; but that, during the said period of five years, or until the road shall be so completed, the interest, if any, payable upon the said bonds, shall be paid by the Baltimore and Ohio Railroad Company. The interest on the said bonds to be payable at such place in the city of Baltimore as the board of directors of the said company may require.

"Second. The premiums of the bonds above par value, if any, shall be received upon the sale thereof by the company, to be paid to the city of Wheeling.

"Third. The said Baltimore and Ohio Railroad Company to make no sale or transfer of the said bonds until after the next session of the general assembly of the State of Virginia, unless the State of Virginia shall, before that time, guarantee the payment of the same. The city of Wheeling hereby agreeing and pledging itself, in good faith, to use every exertion to procure the said gu[ar]antee by the said State of Virginia, of the payment of the principal and interest of the said bonds at the next session of the general assembly thereof.

"Fourth. The city of Wheeling to have the right to redeem the said bonds at any time before the same shall be sold by the said company, upon the payment in money of the par value thereof."

The stockholders of the company, in general meeting, ratified and approved this contract of subscription; and thereupon the subscription, to the amount of $1,000,000, was duly made on the books of the company by John H. B. Latrobe, esq., the attorney in fact of your memorialist. Proxies having been from time to time granted to different persons connected with the company to represent this stock at the different meetings of the stockholders, your memorialist was, from the

date of the subscription down to the meeting of the 12th July, 1845, whenever appearing by her proxy, duly recognised as a stockholder to the amount named. She has not failed in any part of said contract, but held herself ready to do and perform all things required of her by its terms, so long as the company, in good faith, sought to carry out its engagement and undertaking. Much as this subscription has been ridiculed by those who have since endeavored to destroy the right it established, your memorialist is prepared to sustain, not merely its legality, but its availability to the company. The terms of payment were the subject of negotiation, and were in fact dictated by the company, and assented to by your memorialist in the confident belief that thereby the terminus of this road on the Ohio river would thus be forever secured to her. Such was the proposition upon which the law of 1838 was based; offered by the company, accepted and ratified by the State, not only by this law, but on repeated occasions, after the most mature and deliberate investigation, and in the most solemn forms.

The company having, during the years 1836 and 1837, ascertained by actual surveys the cost of constructing their road to the Ohio river, as prescribed by the law of Maryland of June, 1836, and having obtained the subscription of your memorialist to the amount of one million of dollars, in the manner and upon the terms before detailed, were enabled to certify to the treasurer of the Western shore of Maryland, that they *hands* "funds sufficient to complete the said railroad from the Ohio river, by way of, and through Cumberland, Hagerstown, Boonsborough, to its (then) present track near Harper's Ferry." Accordingly, we find, that in November, 1838, the law of Virginia of April 24, 1838, having been accepted by the stockholders, the certificates of the State directors and engineers, verified by the required affidavits, were made and filed with the treasurer of the Western shore of Maryland. The company thus became entitled to demand the payment of the subscription of the $3,000,000 which had been made by Maryland under the law of June, 1836. But that State having been unable to effect a sale of her bonds, as provided for in the law authorizing the subscription, could not make the payment in money at the time and in the mode therein stipulated. To obviate this difficulty, the legislature of that State, by the law of the 5th April, 1839, placed the sterling five per cent. bonds of the State at once in the hands of the railroad company for their entire subscription, amounting in all to the sum of $3,200,000.

This detailed narrative has been here given to show that Wheeling has been recognised and established as the terminus of the Baltimore and Ohio railroad on the Ohio river by the legislation of Maryland and Virginia; by laws accepted by the company, and under which it has continued its existence; by laws enacted in strict accordance with the company's distinct proposition. This restriction of terminus was made for a consideration deemed sufficient by the company, and all the terms of the contracts have been faithfully observed by the city of Wheeling and the State of Virginia. Your memorialist therefore claims the full

benefit of the right thus secured to her, and humbly insists that nothing has yet occurred to justify any interference with that right.

It is true that, at the time of the passage of the law of 1838, by which a question which had excited no little anxiety in the public mind was definitely settled by making Wheeling one of the termini of that road on the Ohio river, the route contemplated westward from Cumberland was through the territory of Pennsylvania, under the original charter from that State which expired in 1843. It is also true that when the company had accepted the law of Virginia of 1838, and applied to Pennsylvania for a renewal of the charter granted by that State, that the renewal was clogged with conditions and restrictions so onerous and oppressive as to render the grant unavailable. It must be remembered, however, that neither the law of Virginia nor the contract with the city of Wheeling, defines any route between Cumberland and Wheeling. The State granted the application of the company upon the terms and conditions demanded, without any reference to the legislation of Pennsylvania; and your memorialist is prepared to show that the change in the position of the company, arising from this qualified refusal of the right of way by Pennsylvania, ought not and cannot affect the right she claims. It has been on repeated occasions admitted, hy those advocating the claims of the company, that, if it were still practicable to execute the law of 1838, this company were bound to adhere in good faith to its terms and provisions. This must be admitted by all who have given any attention to the history of this question. If it be practicable so to do, in the most reasonable sense of practicability, the obligation of making the road to Wheeling still rests with the company, although excluded from the territory of Pennsylvania by the legislation of that State. The simple justice and reasonableness of this proposition being apparent, your memorialist obtained the services of that distinguished civil engineer, J. Knight, esq., by whom such careful *reconnoises* were made, as demonstrated, when taken in connexion with those of B. H. Latrobe, esq., the chief engineer of the company, that the route through Virginia, from Cumberland to Wheeling, was both shorter and cheaper than any other between Cumberland and the Ohio river, proposed by the company or any one else, with a single exception, that leading to the mouth of Fishing creek. It was also shown that the difference in distance and cost in favor of the latter route was not so material as to outweigh the important considerations controlling a preference for the former. Indeed, so indisputable are the allegations here made, that your memorialist challenges the most rigid investigation, and confidently refers to her former memorials and the documents submitted upon this subject at the sessions of 1844–'5 and 1845–'6.

By virtue of the law of April 2, 1838, the company entered the territory of Virginia, and constructed their road to its present termination at Cumberland, to which point it was completed in the month of November, 1842. In December, 1842, the company by memorial came before the legislature of Virginia, asking a mere extension of the time allowed

for completing the improvement through the territory of this State. This memorial, to which your memorialist begs leave to make special reference, after reciting the terms and conditions of the law of 1838, the subscription of Wheeling to *to* the stock of the company, the completion of the road to Cumberland, the means available for its prosecution to Wheeling, and the reasons which had delayed and obstructed the construction of their road to the Ohio river, asks nothing more than an extension of the time limited in the law of 1838. It asks no change of terminus in this State, although more than three years had elapsed since the policy of Pennsylvania with reference to this work had been announced by her law of June, 1839, and but a few months remained of the time allowed by the original charter for the construction of the work through that State. Down to this period, no intimation whatever had been given of the purpose of abandoning Wheeling in favor of any other point. From the year 1829, she had been permitted to enjoy all the temporary and speculative advantages of successive acts, all tending to her establishment as the terminus of this great work on the Ohio river; and, from 1838 until the open and avowed change of policy in 1843, she rested in perfect and assured possession of her rights as such, lawfully acquired and by no one questioned or denied.

For the first time, at the commencement of the session of 1843–'4, the company came before the legislature of Virginia, asking the right to extend their road from Cumberland to any point on the Ohio river not further south than the mouth of the Little Kanawha river. But the acts of the company and the legislature, with reference to Wheeling, were then of so recent date, the injustice and wrong which must attend the granting the prayer so apparent, that the application found little favor, and was for the session abandoned. The plans of the company, however, having been matured during the succeeding year, its net-work of proposed routes having been liberally traced over northwestern Virginia, so as to awaken interest and gain support, they came for the second time before the legislature, with the same application. To this application your memorialist again appeared in opposition. The claim of the company was presented in the most imposing form, and urged with the most distinguished ability. An investigation was had, rarely exceeded for minuteness of examination and mature deliberation, which resulted in the passage of the law of the 19th February, 1845, entitled "An act to authorize the Baltimore and Ohio Railroad Company to complete their road through Virginia to the Ohio river, and for other purposes." This law having been passed with most remarkable unanimity, after a discussion protracted through two successive sessions of the legislature, your memorialist had reasonably hoped that a controversy so injurious to the rights and interests of her people would then have ended, and a decision so clearly just and honorable to Virginia faith would have been acquiesced in, and approved by, their fellow citizens. But the scheme cherished by those having charge of the company was too important in its results to be readily abandoned. The situation of the company itself favored a protracted

struggle. Having the road completed to Cumberland, and thence by the National road, a connexion secured with the Ohio river, and being without the means for the prosecution of the work in any direction, they could well delay for the time, and endeavor by indirection to accomplish that purpose which upon their open and avowed application had been so signally defeated.

The northwestern counties being the only section of the State having an immediate or direct local interest in the question, to them they addressed their appeals, and by various means excited a strong and deep interest in the success of their plans. It was represented, that under no circumstances would the company construct their road to Wheeling, and that, therefore, unless Virginia would recede from her position and grant their demand, the company would be compelled to abandon the prolongation of their road from Cumberland, or seek a connexion with the Ohio at Pittsburgh, should Pennsylvania grant them the right to do so, however disadvantageous the terms.

Deeply interested in the continuation of the road through their territory, a portion of the people of the northwest, alarmed by these representations, and misled by a clamor most artfully and unjustly raised against the city of Wheeling, assembled in convention at Clarksburg, on the 29th May, 1845, for the purpose of reviewing the action of the legislature, and endeavoring to devise the means of obtaining the defeated prayer of the Baltimore and Ohio Railroad Company. This convention had its origin and derived its support almost entirely from the only portion of the northwest that directly connected with the route to Parkersburg, whose immediate interest in this question is opposed to that of Wheeling. Under such influences, and guided by such leaders, that convention resolved to apply for a charter for a company to construct a road through "their own territory by their own means, or such as they could command." Whilst this was the pretence, the device which was to impose upon the sagacity and mislead the justice of the Virginia legislature, the whole proceedings of the convention, marked as they were in many particulars, were in nothing more distinguished than in the continued forgetfulness *betray* of the very device by which alone they hoped to succeed. Having secured this initiatory movement, the plan was followed up in the stockholders' room of the company in Baltimore. In order to make good the representations made to the convention at Clarksburg, it became necessary to secure the unconditional rejection of the law of February 19th, 1845, by the stockholders of the company. Long and elaborate reports were submitted to the meeting of the stockholders by the President and chief engineer of the company, presenting a formidable array of objections, which are so remarkable for misconceptions of the law, and erroneous reasoning, that every one who will examine them, in connexion with the review and triumphant refutation submitted by your memorialist at the last session of the legislature, must agree with your memorialist in the conclusion, that the purpose was, not to examine the law itself with impartiality, but to ensure its rejection. In addition

to these objections, and as a further and yet stronger inducement, the stockholders were assured by the best and most reliable authority, that their wishes would be gained at the then next session of the legislature of Virginia, though the agency of the Clarksburg convention, if they would unconditionally reject the law. And to sustain this assurance, besides unavowed information alleged to have been received from various parts of the State, the following extract from a letter of the President of the Clarksburg convention was read:

"I feel strengthened since I saw you in the opinion, that a prompt rejection of the law is the true policy, and let us (of the northwest) appeal to the legislature to say, whether we are to be deprived of the right to have the railroad at all or not. Let that be the issue, and I feel confident that we can present the subject in such a form as will command success."

To make assurance, however, doubly sure, the leaders of the meeting refused the motion of one of the honorable State agents for an adjournment for a few days, to obtain the attendance of the other agents, so that the State of Maryland with her $3,500,000 of stock might be represented; and the city of Wheeling was, for the first time, denied her rights as a stockholder, in violation of the contract of subscription and the charter of the company.

Although thus left with but a minority of the stock present, the meeting proceeded to register the decree pre-established under the further saving assurance, frankly avowed, that the right of Wheeling to the terminus of the road in Virginia had been so frequently recognised and established by the legislature of that State, that the denial of the right of way to that point could not be anticipated, whenever the company chose to ask it.

In the mean time a convention of the undeniable majority of the people of the northwest had been held at Fairmount, in the county of Marion, on the 2d July, 1845. To the proceedings of this convention your memorialist would specially refer. By a clear and succinct narrative of the past history of this question, they clearly vindicate the legislation of the State, whether reference be had to established rights, the peculiar interests of the northwest, or to those of the State at large. Whilst they expose this disingenuous management by which the company had sought to accomplish their purpose through the agency of the Clarksburg convention, they recognise the legislature of Virginia as the sole authority from whence shall emanate all enactments upon this and all other subjects pertaining to our Commonwealth; and further, that these enactments can never be framed to suit the seeming requirements of any interests other than those of the Commonwealth and our people. Relying upon the plain and simple statement of the truth so clearly vindicating the past legislation of the State on this subject, they neither attempt to mislead by a pretence, however plausible, or to intimidate by threats, as unworthy in those who use them as they are insulting to those to whom they are offered.

Under such circumstances the application of the Clarksburg conven-

tion was presented to the last session of the legislature; confiding in the sufficiency of the form of the application as distinguishable from its essence and spirit, its advocates boldly insisted upon its independence of all connexion with the Baltimore and Ohio Railroad Company, and its consequent freedom from all those obligations which had been so closely fastened upon that company, and solemnly sanctioned and established by the law which had been passed. But when the truth was manifested by the discussion which ensued, so convincing and overwhelming were the proofs, they were forced to the acknowledgment of the entire identity of the Clarksburg convention with the Baltimore and Ohio Railroad Company, and that the pretence of the former was but the mere device to secure the desired grant to the latter. The application of course failed by a decided and overwhelming vote, and again was the honor and good faith of Virginia signally vindicated.

Here your memorialist was content for the time to rest the question, and leave the future to solve the difficulty in which the company had become involved by the unwise policy of those who held the control and management of its affairs. She was satisfied that necessity, if not a more enlightened discretion, would compel them to abandon their highly cherished attempt upon the best interests of Virginia, even should they continue to treat with contempt and indifference the rights and interests of Wheeling, and would ultimately lead them to ask from the State a renewal of that right, then about expiring, which they had so unreasonably declined. But so soon as intelligence of the decision of the Virginia legislature reached the company, the committee of the board of directors, to whom this subject had been confided, requested the agents of your memorialist to obtain, if practicable, a renewal of this right upon terms as favorable as the legislature would grant. In discussing the wishes of the company all objection as to the terminus at Wheeling was distinctly waived and withdrawn; not that the choice of termini and routes was not still, for obvious reasons, earnestly desired, but that they were then satisfied the policy of Virginia in relation to their work was too firmly settled to permit the hope of its being abandoned.

They, therefore, desired that your memorialist should obtain a law, which, whilst it secured her right as the terminus of the road on the Ohio, *such* make such relaxation of the conditions of the grant as would render it more favorable to the interests of the company. In view of the deep interests felt by all in the termination of a contest so injurious to the interests of the people of Wheeling, and the major part of the people of the northwest, so clearly identical in this subject, and confiding in the representations made by this committee, (undoubtedly made in good faith, and which would as undoubtedly be renewed under similar circumstances,) the agents of your memorialist consented to return to the seat of Government and endeavored to procure a renewal of the grant upon the most favorable terms that could be obtained. The result of their application was the passage of the law of the last

session, entitled "An act supplementary to and amendatory of the act entitled 'An act to authorize the Baltimore and Ohio Railroad Company to complete their road to the Ohio river, and for other purposes,' passed February 19, 1845." This law was passed on the 28th February, 1846. By the first section, the company are "allowed ten years from the tenth day of March, 1847, to complete their railroad to the city of Wheeling, according to the terms and conditions of the said act of the 19th February, 1845, except as provided for in this act: Provided, That the said company shall enter upon the construction of the said road within three years from the passing of this act." Thus, as your memorialist is well persuaded, would this long protracted struggle have ended, and as she is also well persuaded it must hereafter end, if truth and right prevail, had not a change occurred in the counsels of the company, caused by one of the most remarkable instances of covert legislation, (to use no harsher term,) obtained from the legislature of Pennsylvania, which has ever occurred in that or any other State.

As the legislation here referred to has been supposed by many, both in and out of Virginia, to have effected a material change in the position of the company, your memorialist will, in a brief summary, show the true character of that legislation, and thus show also, that so far as it relates to the present subject, it is as unworthy of a grave consideration, as it is manifestly fraudulent and unavailing for the purpose it was seemingly designed to accomplish.

On the 3d April, 1837, a railroad, called the Pittsburgh and Connelsville railroad, was authorized by the legislature of Pennsylvania. This road was to extend from Pittsburgh to some suitable point at or near Connelsville; the latter being situated on the Youghiogeny river, in a southeasterly direction from Pittsburgh, about thirty-five or forty miles from the Maryland line, and within the limits of Pennsylvania. The work was required to be commenced within five years, or the law expired by its own limitation. The work not having been commenced within the five years limited, the law became void on the 3d April, 1842.

On the 18th April, 1843, an act was passed by the legislature of Pennsylvania, entitled "An act for the relief of the overseers of the poor of the borough of Erie, and for other purposes." While this bill was pending, several sections were added by way of rider, reviving the Pittsburgh and Connelsville railroad act, and granting the privilege to extend "the said railroad beyond Connelsville to Smithfield, or any other point on the waters of the Youghiogeny, and within the limits of this Commonwealth." Before this law, as so amended, was approved by the Governor, the purpose of the amendment having been discovered, on the following day, the 19th day of April, 1843, a resolution was moved and carried as an amendment to a resolution legalizing the election of a justice of the peace in the borough of Dillsburg, in the county of York, and for other purposes," by which so much of the law, entitled "An act for the relief of the overseers of the poor of the borough of Erie, and for other purposes," as revived the charter

of the Pittsburgh and Connelsville Railroad Company, was repealed. During the last session of the legislature of Pennsylvania, an application was presented by the friends of the Baltimore and Ohio Railroad Company, in Pennsylvania, asking the necessary authority to extend the road to Pittsburgh.

This application awakened the attention of the whole State, exciting a most animated contest; both the friends and opponents of the measure exerting their utmost power and influence to accomplish their opposite purposes. When it was found that the grant was so clogged and embarrassed by conditions, limitations, and restrictions, as to render it impossible of acceptance by the company, a trick was resorted to, as fraudulent and disgraceful to its authors, as it has proved to be ineffective for the end proposed. Whilst the public attention was engrossed by the debate upon the open and avowed application, after the law of Virginia of the 28th February, 1846, and the probability of its acceptance became known at Harrisburg, a bill, ostensibly of a private or local character, placed upon the private calendar, and passed on private bill day, was carried through both branches of the legislature on the 3d April, 1846. The title of this law is "An act to authorize the court of quarter sessions of Alleghany county to vacate Delaware lane, in said county, and for other purposes." As a law supposed to relate exclusively to the subject mentioned in the title, it excited no attention from the members from other parts of the State. The design was cunningly enveloped in the title quoted, ingeniously screened from observation by putting the bill on the private calendar, and further concealed from detection by the phraseology employed to accomplish the purpose. Whilst on its passage the following section was moved as a rider, and carried: "Sec. 6. That the seventh section of the resolution, entitled 'a resolution legalizing the election of a justice of the peace in the borough of Dillsburg, in the county of York, and for other purposes,' approved the 19th day of April, 1843, be, and the same is hereby, repealed;" and that the 7th section of the original act, entitled "An act for the relief of the overseers of the poor of the borough of Erie, and for other purposes, passed the 18th day of April, 1843, be, and the same is hereby, continued in full force." This matter was so managed that it is declared, on authority entitled to credit, that no man, excepting the parties to the fraud, in either house or elsewhere, suspected that the law had reference to the right of way. The fact that such a law had passed, and received the signature of the Governor, was not divulged until after the adjournment of the legislature.

On the 13th of April, 1846, an act was passed by the legislature of that State, entitled "An act to incorporate the Pennsylvania Railroad Company;" and on the 21st April, 1846, another act was passed, entitled "An act to authorize the Baltimore and Ohio Railroad Company to construct a railroad through Pennsylvania, in a direction from Baltimore to the Ohio river at the city of Pittsburgh." This latter act, although the grant is so embarrassed by conditions, limitations, and restrictions, as to forbid its acceptance, becomes null and void if the Penn-

sylvania Railroad Company shall do certain things before the 30th of July, 1847. These laws defined and settled the policy of Pennsylvania; and all professions of belief, by those who have the opportunity of forming an advised opinion, that this policy will be abandoned by that State, are only intended to mislead, and are not entitled to the slightest consideration.

Having obtained the law of Virginia of the 28th February, 1846, by the means before briefly explained, and the laws, of which a brief summary has been given, having been passed by Pennsylvania, the present policy of the company is susceptible of an easy explanation. It must be remembered they are utterly without the means, at present, of extending their road in any direction; although it must be equally clear to every one familiar with their resources, the great importance of the interests dependent upon their success or failure, the certain value of the work itself when completed to the Ohio river, and the progress of rival works, that the time is rapidly approaching when necessity will compel the attention and interposition of the interests alluded to, and secure the completion of the work. As a last effort to shake the firmness of Virginia, and break down those obstacles which have heretofore obstructed their purpose, the company most unwisely gave their countenance and timid support to the Pittsburgh and Connelsville Railroad Company, a company claiming a merely temporary existence by fraud, and, as your memorialist believes, used by all parties concerned to accomplish other ends than the one professed to have been intended by the ambiguous laws which gave it existence. This movement is explained by the following extract from the last annual report of the President of the Baltimore and Ohio Railroad Company, October 12th, 1846:

"It is proper also in this place to state, that, during the last session of the Pennsylvania legislature, a law was obtained authorizing the construction of a railroad from Pittsburgh to some point on the Maryland line where it might be united with the Baltimore and Ohio Railroad; and in the expectation that it might thereby become an important lateral connexion of their road with the Ohio river, the board, in the month of May last, authorized a subscription to be made on behalf of this company for 700 shares, costing, at par value, $35,000, in case such amount should be found necessary to secure the charter of the Pennsylvania company. Seven hundred shares were accordingly subscribed under the authority so given; and the first instalment, amounting to $1,750, was paid out of the revenue of the Baltimore and Ohio Railroad Company."

(It is but justice to the sagacity of the distinguished President of the company that your memorialist should state, in this connexion, that during the time of these transactions he was absent from this country, and from the short period which had elapsed between the passage of the Pittsburgh and Connelsville Railroad law and the making this subscription, as well as from other obvious reasons, it is not probable that he advised this proceeding of the company.)

But one construction can be put upon this act of the company; if the work was contemplated in good faith, if the project was really any thing more than a device of Pittsburgh to entrap the company, and thus excite Philadelphia to action under the Pennsylvania railroad charter, concurred in by the company to operate upon Virginia, the subscription was *to* grossly inadequate, more especially when followed up by no further encouragement. The President proceeds in the report: "It is now understood that the Pittsburgh and Connelsville Railroad Company are desirous of progressing with their road with the least possible delay, and that they are not without expectations of further and greater assistance from this company. Whatever may be the result of these expectations, it is certain that a compliance with a subscription already made will be insisted upon, and the extent to which this company may be called upon for payment will be an addition to the obligations already explained, to be discharged from such resources as may be in its power."

Immediately following this movement came the call for the meeting of the convention, held at Weston, Lewis county, on the 25th September, 1846, being nothing more than a renewal of the same plan of operations adopted in 1845. Means of an unusual and extraordinary character were used to arouse the people of Western Virginia, and induce a general attendance. Travelling agents visited different sections with fitting arguments suited to each locality, and handbills, containing appeals as impassioned and violent as they were outré and incongruous, were scattered broadcast over the country. The single consideration, presented to the people in every section, was, that a great national highway should traverse the particular region, bringing with it wealth and prosperity, and that nothing more was needed than their zeal and activity to ensure success; that the refusal of their former application was but one of "a series of inconsistent means emanating from their own legislature, having a direct tendency to outrage and oppress their dearest rights, and calling them, with thunder tones, to assemble themselves together and consider the affairs of State." There was no pretence of a calm consideration of the reasons which had governed the majority of the legislature in their decision. Every thing which would explain and justify that decision was withheld; and every thing which could inflame and prejudice was prominently brought forward with exaggerated emphasis. For the justness of these strictures your memorialist refers to the proceedings of the convention, and every paper which has emanated from it or its leaders. There can be no doubt of the sincerity and good faith of the large body of those who attended at that meeting, and your memorialist would treat them with that respect and consideration to which they are justly entitled. She claims at your hands no special favor; she asks for no partial legislation; she seeks to do no wrong to the rights of any part of the citizens of this Commonwealth; on the contrary, she has been on repeated occasions forced to your bar an unwilling supplicant for protection. Convinced of her undoubted right in the premises, she has never hesitated to avow and maintain that right whenever it has been threaten-

ed; and all she asks is a patient and impartial hearing, such as has been heretofore accorded to her, and which she cannot doubt at all times receiving from a Virginia legislature.

No one who will examine the proceedings of the Weston convention, can fail to be convinced that the Baltimore and Ohio Railroad Company is alone contemplated for the accomplishment of their purpose, and that, therefore, the independence of the proposed company will be but nominal. The burthen of their complaint is the refusal of the legislature to grant the prayer of that company, and the relief they ask is the virtual granting of that application. Hence your memorialist respectfully insists, that the form of the application ought not, and cannot, be regarded, but that those to whom it is presented shall look into the merits of the proposition in its real and true character, and if the grant be made, let it be direct to those for whom it is in fact intended. This course is alone worthy of the Virginia character.

To show conclusively that your memorialist does not pervert the purpose of this application, she will here quote a resolution offered in the Weston convention by the Hon. E. S. Duncan, an active and influential member, who was also president of the Clarksburg convention last year:

"Resolved, That this convention in the efforts which they are making to obtain an extension of the Baltimore and Ohio railroad through the northwestern portion of the State, are not influenced by mere local or selfish considerations; that they desire to develope the natural resources of their country, to increase its trade, and with it to increase its population and wealth; and although they might prefer to prescribe the line of the route, and its terminus on the Ohio river, they are ready to forego their individual preferences when brought into conflict with other portions of the West, and they are therefore willing that the improvement should be conducted along any route, and terminate at any point on the Ohio river, which shall be deemed most advantageous to the western part of the State."

This resolution was not adopted, nor does it appear amongst the published proceedings of the convention; it is characterized by too much directness and candor to suit the policy of the other leaders, and its tenor and effect were particularly obnoxious to the interest which predominated in the convention, that connected with the mouth of the Little Kenawha river; for notwithstanding all professions of liberality, it plainly appears that their indignant opposition is not to restriction in itself, but to the restriction which does not secure their own peculiar interests.

That the identity of this convention with the Baltimore and Ohio Railroad Company may still more plainly appear, your memorialist begs leave to refer to the following extracts from the last annual report of the President of the company, submitted to the stockholders at their meeting in October last:

"The board, at the same time, without meaning to underrate the importance of the railroad from Pittsburgh to the Maryland line, are

unwilling to lose sight of the expectation that by means of the legislation of the State of Virginia they may yet be enabled to prosecute the main stem of their road to some eligible point on the Ohio river within that State.

"It is not probable that the just claims of the people of the northwestern and southwestern counties will be much longer neglected by the enlightened councils of that great Commonweath; and it is not unreasonable to expect that other interests, heretofore more partial to other improvements, will, at no distant day, be brought to look upon the Baltimore and Ohio Railroad as a most practicable means of developing the resources of those parts of the State which have hitherto depended upon other means.

"The proceedings of a numerous convention of delegates from the northwestern counties of the State of Virginia, recently held at Weston, Lewis county, would appear to encourage these expectations, and to warrant the hope that so much intelligence and perseverance cannot fail ultimately to succeed."

If any doubt remained with any reasonable and candid mind, these extracts would surely satisfy him that your memorialist had properly identified the Weston Convention with the company, and that the application must be considered as if it emanated from the latter, receiving all the advantage of the earnest recommendation of the former.

Your memorialist has shown that the company selected the terminus of their road on the Ohio river when the whole range of their present application was open to their choice, solemnly confirmed that selection by the acceptance of the law of 1838, for a valuable and sufficient consideration, having secured under that law, and by the aid of the city of Wheeling, most important and essential advantages, and now hold, by virtue of the same law, their very existence in Virginia; she has also shown that the company themselves had established, beyond the reach of successful contradiction, that the terminus thus selected was the most eligible of all others, having reference to the interests of the company and of the State at large; that the interests peculiar to the northwestern division of the State are the best subserved by the route to Wheeling, let any standard of comparison be adopted, whether population, taxation, productive capital, or capacity for sustaining a dense population, or all these combined, and that the route itself, although longer and more expensive than the one formerly proposed through Pennsylvania, is yet the shortest and cheapest of all the routes proposed by the company through Virginia, from Cumberland to the Ohio river, with the single exception of that leading to the mouth of Fishing creek, and that advantages peculiar to the former more than compensated for the difference in length and cost in favor of the latter. Under such circumstances the inquiry naturally arises, if these things be true, why this protracted contest? Why do the company hesitate to accept the grant secured to Wheeling, and insist upon their original proposition for the grant to the mouth of the Little Kenawha? These

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inquiries have been already partially answered, and will be now more fully considered.

The law of February 28th, 1846, secures the right of way to Wheeling upon the most favorable terms, and is held by the company upon the single condition of commencing the construction of their work within three years from the date of the law, a limitation of time designedly made long enough to enable the company to make the necessary preparations for commencing the work, and also, should they desire it, to make any further experiments upon the firmness of Virginia. Whilst thus secured from any ultimate hazard, the fraudulent legislation obtained in Pennsylvania furnished them the means of renewing the agitation of the question in Virginia, and reinspired the hope of obtaining the grant which had been refused. Having nothing to lose by the experiment, being unprepared for the prosecution of their work in any direction, they deemed it worthy of the trial; and hence the renewal of the contest under the circumstances which they have flattered themselves give some assurance of success.

But what is the aim of the company in seeking the lowest possible terminus on the Ohio river? Your memorialist has, in a former memorial, explained this purpose, and now repeats, that the trade of the West, to be commanded at Wheeling, has already been approached by the works of New York, Massachusetts, and Pennsylvania.

The company fear the competition of the works, and are anxiously looking to that advantage still retained by Virginia in the unrivalled outlet of her own central improvement. President Jones, in his report to the stockholders in October, 1845, after alleging that "Virginia, of all the States, seems to stand aloof from so liberal a policy, and to regard the appeals of her own citizens upon this subject with indifference," proceeds as follows: "If it were possible to draw the trade of the great West to her capital by means of the James river and Kenawha canal, there might, perhaps, be some force in the arguments used for not granting this company the right of way; but who that is familiar at all with the growing greatness of the Mississippi valley can for a moment suppose such a result to be possible?" Still more plainly does President McLane, in his last annual report, develope this purpose of breaking down the great leading improvement in Virginia, upon the final success of which so much of the future welfare and prosperity of the State at large so manifestly depends. In the extract before quoted, he says, "it is not probable that the just claims of the people of the northwestern and southwestern counties will be much longer neglected by the enlightened councils of that great Commonwealth; and it is not unreasonable to expect that other interests, heretofore more partial to other improvements, will, at no distant day, be brought to look upon the Baltimore and Ohio railroad as the most practicable means of developing the resources of those parts of the State which have hitherto depended upon other means." Such language can receive but one interpretation. He says to Virginia, give us the unrivalled advantages

of your geographical position, between the Atlantic and the great valley of the West, and thereby surrender for a mess of pottage the rich and invaluable heritage of your children, and Baltimore will be your market, Baltimore will develope your resources, Baltimore will supply your necessities, and thus become the commercial mistress of the proud Old Dominion. But upon this point your memorialist will not presume to enlarge. There is identified with the interests of this State too much intelligence and enlightened sagacity to render any aid from her essential to the proper understanding of this part of the subject. She leaves it with those whose peculiar duty it is to guard these interests, knowing full well they can never be misled by plausible pretences, nor intimidated by unworthy threats or groundless complaints.

Your memorialist has now submitted the justification of her prayer, when she asks that no law be passed [by] which the Baltimore and Ohio Railroad Company may be permitted to construct their road to any other point on the Ohio river than to the city of Wheeling, in the county of Ohio. Her resistance of the application of the western convention is based upon a right solemnly established and guaranteed by the Commonwealth. Upon your decision hangs the fate of her people. Borne down by the rivalry of Pittsburgh on the north, a termination of this great work within a like distance on the south must dry up the remaining sources of her prosperity, and expose her people to ruin in all their interests. She claims your protection as an integral part of the Commonwealth; and now that her sacrifice is demanded, she but asks that the great State necessity requiring it shall be shown. She seeks to deprive no portion of those within the common allegiance of any right they enjoy, or to which they are entitled. She has shown that her claim in no wise affects the great leading interests of the State, to which all others must be subordinate. She claims, and is prepared to show, that the interests of the decided majority of the northwest require that the present law on this subject shall not be disturbed. If, in the exercise of your high prerogative, you firmly adhere to the right, this long protracted controversy must end in the adoption of the law, and the construction of the work it authorizes.

It is true, that upon the eve of the assembling of the legislature, circumstances have occasioned, in certain quarters, very animated discussions touching the Pittsburgh and Connelsville railroad scheme. The purpose of the Pittsburgh people having been accomplished by the decisive action of Philadelphia in securing the Pennsylvania railroad, they have abandoned it to its intended fate. Its Baltimore patrons, not having as yet tested its influence in Virginia, are vainly endeavoring to reanimate it, and, if possible, to secure for it seeming vitality, until it shall have served their purpose also. That either party ever contemplated the actual execution of this project, is incredible to all who are familiar with its origin, the impracticability of its execution, and the decisive fact, that the Baltimore and Ohio Railroad Company

never can, under the most favorable circumstances, sustain themselves under the destructive competition they must encounter at Pittsburgh. Fortunate, therefore, is it for the rights and interests of your memorialist that this whole question is perfectly within the control of the legislature of Virginia. The Baltimore and Ohio railroad never can and never will reach the Ohio river, save by the permission of Virginia. Your memorialist cannot deem it necessary to notice the unjust aspersions upon her people with which some of the petitions circulated by the agents of the western convention have been so painfully disfigured. She refers to the faithful allegiance her people have ever maintained to the laws and institutions of the Commonwealth as a sufficient answer. All such imputations betray only the malignity of those who use them, and cannot weigh in the counsels of a wise, intelligent, and patriotic legislature.

From the peculiar geographical position of the city of Wheeling, with reference to the State at large, she is placed beyond the reach of any probable system of State improvement, so that Virginia may never have another occasion upon which "to signalize her beneficence in a liberal support of her growing city of the West." Contributing, as she has done for past years, her thousands of dollars to the common treasury, whilst some of those seeking her ruin have not contributed their hundreds; drawing nothing in return for any improvement, whilst they have been the favorite beneficiaries of your liberal bounty in that regard, in making this her appeal to you, she addresses only your sense of justice and enlightened sagacity; she lays her claim before you, and asks that you [will] not authorize its violation. She knows the connexion of her interests with those of the State at large, and humbly insists that the latter are subserved by securing the former. In this manner only would she presume to approach a Virginia legislature, leaving her opponents in unenvied possession of all the advantages to be gained by disingenuous management and unjust aspersions upon the character of her people.

In conclusion, your memorialist prays that no law be passed authorizing the extension of the Baltimore and Ohio Railroad to the Ohio river at any other point than the city of Wheeling, in the county of Ohio, by said company, or any other corporation.

And your memorialist will ever pray, &c.

In witness whereof, the council of the city of Wheeling have caused these presents to be signed by their chairman, (in the absence of his honor, the Mayor,) and the common seal of said city to be affixed, this seventh day of December, A. D. 1846.

[SEAL.]

THOS. HUGHES.

House of Delegates, Saturday, January 2, 1847.

No. 63.

A bill to incorporate the Potomac and Ohio Railroad Company.

Substitute.—Hunter's substitute.

Bill No. 63.

Substitute proposed to be submitted by Mr. Hunter to the bill, entitled "A bill to incorporate the Potomac and Ohio Railroad Company."

1. Be it enacted by the general assembly, That the Baltimore and Ohio Railroad Company be, and they are hereby, authorized to complete their road through the territory of this Commonwealth, so as to terminate at the city of Wheeling, in the county of Ohio: Provided, however, That they shall not be permitted to strike the Ohio river at a point lower down than at or near the mouth of Fishing creek, in the county of Tyler.

2. Be it further enacted, That nothing in this act contained shall be so construed as to entitle said company to any subscription on the part of this Commonwealth to the stock of said company, by virtue of any act heretofore passed, and especially by virtue of the several acts passed March 28, 1837, and April 2, 1838, concerning the said company, which said provisions in said acts are hereby declared to be no longer in force and of no effect.

3. Be it further enacted, That full right and privilege is hereby reserved to the Commonwealth, or to any citizen thereof, or any persons or companies who may hereafter be so authorized by the general assembly to connect or intersect with the said Baltimore and Ohio railroad within this Commonwealth, any railroad, canal, or other road for transportation: Provided, that in forming such connexion or intersection, no injury shall be done to any of the works of the said Baltimore and Ohio Railroad Company.

4. Be it further enacted, That said company shall be subject to the provisions of the act of assembly passed on the eleventh day of March, eighteen hundred and thirty-seven, establishing general regulations for the incorporation of railroad companies, with respect to that portion of their road or other improvements now or hereafter to be constructed within this Commonwealth, so far as the same are properly applicable: Provided, that said Baltimore and Ohio Railroad Company shall not be permitted to charge for transportation or travel to or from Baltimore, from any point east of the Ohio river, on the road, more in the aggregate than for transportation or travel to or from the Ohio river, to or from Baltimore: And provided further, that they shall not charge for transportation or travel to or from the city of Wheeling, at a rate greater in proportion than *the* may charge to or from such point on the Ohio river as their said road may touch before reaching the said city of Wheeling.

5. Be it further enacted, That the stock, property, and profits of said company, so far as the same may be, or accrue within this Commonwealth, shall be subject to general taxation in like manner and on the same footing with other similar companies within this State: Provided, however, that said taxing power shall not be exercised until, and unless the nett income of the said Baltimore and Ohio railroad shall exceed six per centum per annum on their capital invested.

6. Be it further enacted, That the general assembly hereby reserves to itself the full power of hereafter altering, amending, or modifying any, or any part of the provisions of this act: Provided, that the rights of property and franchises acquired under this act, and the free use and enjoyment of their rights and privileges as granted by this or any other former act now in force shall not be taken away, or impaired, by any such further act of legislation.

7. Be it further enacted, That the said Baltimore and Ohio Railroad Company shall not be required to construct so much of said road as may lie between the point of intersection with the Ohio river, at or near the mouth of Fishing creek and the city of Wheeling, until the said city of Wheeling and the people of Ohio county, or other persons or parties by their procurement, shall have subscribed to the capital stock of said company an amount not less than one million of dollars; and shall, moreover, have proved to the satisfaction of the board of public works, to be by them certified, that such subscription has been, or can be, made available at its par value, to the purposes of constructing said road.

8. And be it further enacted, That if upon said subscription being so as aforesaid made, proved, and certified, the said Baltimore and Ohio Railroad Company shall fail to make that portion of their road lying between said point of intersection with the Ohio river, at or near Fishing creek and the city of Wheeling, before or at the time when their said road shall have been completed to the said point at or near Fishing creek, then, and in that case, all and every right, privilege, and franchise by this act granted, shall cease and be of no effect in like manner as if this act had never been passed: Provided, however, that said subscription shall be made, proved, and certified, as herein before provided, within one year from and after the passage of this act.

9. Be it further enacted, That as a condition upon which the powers and privileges of this act are granted, the said Baltimore and Ohio Railroad Company shall enter upon the construction of the said extension of their road, as herein before authorized, within three years from and after the passing of this act, and shall complete the same within twelve years thereafter.

10. This act shall be in force from and after the passage thereof.

Tuesday, January 26th, 1847.

No. 63.—A bill to incorporate the Potomac and Ohio Railroad Company was taken up, and the same having been for some time under discussion—

On motion of Mr. Tunstall, the house adjourned until to-morrow, 12 o'clock.

Potomac and Ohio Railroad Company.

Bill No. 63.—A bill to incorporate the Potomac and Ohio Railroad Company, January 2d, 1847. Read first, to be read second time.

1 Be it enacted by the general assembly, That
2 it shall be lawful to open books in the town of Romney, under the direction of
3 or any three of them; at the town of Moorefield, under the direction of
4 or any three of them; at the town of Franklin, under the direction of
5 or any three of them; at the town of Beverly, under the direction of
6 or any three of them; at the town of Kingwood, under the direction of
7 or any three of them; at the town of Pruntytown, under the di-
8 tion of
or any three of them; at the town of Clarksburg, under the direction of
9 or any three of them; at the town of Weston, under the direction of
10 or any three of them; at Bruxton court-house, (sometimes called Sutton,) under the direction of
11 or any three of them; at Gilma court-house, (sometimes called Glenville,) under the direction of
12 or any three of them; at Parkersburg, under the direction of
13 or any three of them; at Middlebourne, under the direction of
14 or any three of them; and at such other places under the direction of such agents as the commissioners
15 at either of the places aforesaid shall designate, for the purpose of receiving subscriptions
16 to the amount of eight millions of dollars, in shares of one hundred dollars each, to constitute a
17 joint capital stock, for the purpose of constructing a railroad from some point on the Potomac river
18 not east of the mouth of the south branch thereof, to some point on the Ohio river not south of
19 the mouth of Little Kanawha river.

2. Be it further enacted, That said books shall be opened at the several places aforesaid on the
2 day of next, or at any time within
3 months thereafter; and the same shall be kept open, and the subscriptions be received and if necessary
4 reduced, in the manner provided by the act, entitled "An act prescribing certain general regulations

for the incorporation of railroad companies," passed on the eleventh day of March, one thousand eight hundred and thirty-seven; and when shall have been subscribed, the subscribers, their executors, administrators, and assigns shall be, and they are hereby, incorporated and made a body politic and corporate, under the name and style of "The Potomac and Ohio Railroad Company," and shall be invested with all the rights, privileges, and powers conferred upon such bodies politic and corporate, and be subject to all the restrictions, regulations, and provisions prescribed by the above act, except so far as such rights, privileges and powers; and such restrictions, regulations, and provisions may be repealed, altered, or modified by the express provisions of this act hereinafter contained; and provided, also, that no subscription for stock in the said company shall be valid unless at the time of such subscription the subscribers shall pay five dollars on each share on stock subscribed for.

3. Be it further enacted, That the subscribers, at their general meeting called in pursuance of the provisions of the above recited act, and the proprietors of the stock at every annual meeting thereafter shall prescribe the number of persons who shall constitute the board of directors for the ensuing year, or until another annual or general meeting shall be held, and shall thereupon elect the number of directors so by them prescribed, who shall continue in office, until the next annual meeting after their said election, and until their successors shall be elected; and the said directors so elected shall have the power of electing a president of said company, either from among the directors or others, and of allowing him such compensation for his services as they shall deem proper; and in every such election, and on all other occasions whereon a vote of the stockholders is to be taken, each stockholder shall be allowed to give one vote for each and every share of stock owned by him, her, or it, and may depute any other person to act for him, her, or it, as proxy.

4. Be it further enacted, That, at all general meetings of the said stockholders, a majority in value of all the stockholders in said company may remove from office any president or any of the directors of said company, and may appoint others in their stead.

5. Be it further enacted, That if the capital stock of said company shall be deemed insufficient for the purposes of this act, it shall and may be lawful for the said directors, or a majority of them, from time to time increase the same by the addition of so many shares as they may deem necessary, for which they may at their discretion cause subscriptions to be received in such manner as may be prescribed by them, or may sell the same for the benefit of said company, for any sum not under the par value thereof; and the said directors, or a majority of them, shall have power to borrow money for the purposes of this act, and to issue proper certificates or evidences of such loans, and to pledge the property of the company for the payment of the same, and the interest that may accrue thereon.

6. Be it further enacted, That whenever it shall become necessary, under the provisions of the twenty-sixth section of the above recited act, for the board of public works or such agent or agents as may be appointed by the legislature for the purpose, to fix and regulate the rate of tolls to be demanded and received by the president and directors of said company, upon their said railroad, the same shall be so fixed and regulated that the proceeds thereof shall not yield a nett profit exceeding per centum per annum on the capital stock expended in making and completing the said railroad, over and above what may be necessary for the repairs and renewal of the same.

7. Be it further enacted, That the works of the said company shall be commenced within two years, and shall be completed within ten years from and after the passage of this act.

8. Be it further enacted, That it shall and may be lawful for the president and directors of said road to contract with the Post Office Department of the United States for the transportation of the mail over said road, and to receive therefrom such compensation therefor as shall and may be agreed upon between the said parties.

9. Be it further enacted, That so much of the provisions of the act herein before recited, and of any other act or acts as shall be inconsistent with the provisions of this act, shall be and the same

is hereby repealed, so far as the same may affect the charter granted by this act; provided, however,
that for all other purposes the same shall have the same force and effect as if this act had never
passed.

10. This act shall be in force from and after the passing thereof.

Wednesday, January 27th, 1847.

No. 63. A bill to incorporate the Potomac and Ohio Railroad Company was taken up, and having been for some time under discussion, on motion of Mr. Stephenson the house adjourned until to-morrow, 12 o'clock.

Thursday, January 28th, 1847.

No. 63. A bill to incorporate the Potomac and Ohio Railroad Company, which was under consideration when the house adjourned on yesterday, was taken up, and having been for some time under discussion, on motion of Mr. Lacy, the house adjourned until to-morrow, 12 o'clock.

Friday, January 29th, 1847.

No. 63. A bill to incorporate the Potomac and Ohio Railroad Company was taken up, and the same having again been under discussion, on motion of Mr. Lee, the house adjourned until to-morrow, 12 o'clock.

Saturday, January 30th, 1847.

No. 63. A bill to incorporate the Potomac and Ohio Railroad Company was taken up, and having been under discussion, on motion of Mr. Lee, the house adjourned until Monday, twelve o'clock.

Monday, February 1st, 1847.

No. 63. A bill to incorporate the Potomac and Ohio Railroad Company was taken up; thereupon a motion was made by Mr. Edgington, that the farther consideration thereof be indefinitely postponed, and the said motion having been for some time under discussion, on motion of Mr. Yerby, the house adjourned until to-morrow, 12 o'clock.

Tuesday, February 2d, 1847.

No. 63. A bill to incorporate the Potomac and Ohio Railroad Company was taken up, and the question being upon the indefinite postponement, on motion of Mr. Sheffy, the house adjourned until to-morrow, 12 o'clock.

Wednesday, February 3d, 1847.

No. 63. A bill to incorporate the Potomac and Ohio Railroad Company was taken up, and the question being upon the motion of Mr. Edgington to postpone the same indefinitely, the house, on motion of

Mr. Tunstall, ordered that the consideration of said bill hereafter shall take place at half-past twelve o'clock until decided; and then, on motion of Mr. Tunstall, the house adjourned until to-morrow, 12 o'clock.

Thursday, February 4th, 1847.

A motion was made by Mr. Sheffey that the house adopt the following resolution:

Resolved, That leave be given to bring in a bill providing for a change in the prescribed route for the extension of the Baltimore and Ohio Railroad Company through Virginia to the city of *of* Wheeling.

And a motion was made by Mr. Hunter that the same be laid on the table; and the said motion being under discussion, the house passed to the consideration of the orders of the day.

Friday, February 5th, 1847.

Mr. Hunter submitted an amendment, which he intended to propose as a substitute for the bill to incorporate the Potomac and Ohio Railroad Company, which was, on his motion, ordered to be printed. (Doc. bill, No. 63.) [Herein before inserted.]

Saturday, February 6th, 1847.

No. 63. A bill to incorporate the Potomac and Ohio Railroad Company was taken up, and the motion submitted by Mr. Edgington, that the farther consideration thereof be indefinitely postponed, being under discussion, Mr. McDermon demanded that the main question be now put; and the question being put upon seconding the said demand, it was seconded by the house. Ayes 66, noes 53.

On motion of Mr. Hunter, the vote thereupon was recorded as follows:

Ayes—Messrs. Brown of Albemarle, Hart, Harvie, Powell, McDermon, Sheffey, Johnson, Scruggs, Burwell, Bambrick, Harrison of Brunswick, Morris, Mosby, Fox, Dickinson, Cardwell, Roane, Love, Hill of Fayette, Nicholas, Evans, Stillman, Street, Caper, Carson, Walker, Stovall, Hiett, Thompson of Hampshire, Darracott, Lancaster, Dillard, Gresham, Richmond, Ballard, Schooley, Poindexter, Edmondson of Lunenberg, Banks, Haymond, Oldham, Waggoner, Williams, Brown of Monongalia, Beirne, Kelly, Perrow, Yerby, Nelms, Oliver, Edgington, Davis, Tatum, Syme, Cackley, Fairfax, Daniel, Strother, Mayo, Cook, Harper, McElhenney, Morison, Fitzhugh, Freeman, and Castleman—66.

Noes—Messrs. Jones, (Speaker,) Finney, Layne, Byrd, Boak, Small, Thompson of Botetourt, Bennett, Lacy, Slaughter, Irving, Thompson of Dinwiddie, Scott, Smith, Wall, Jones of Gloucester, Leake, Carroll, Calwell, Lee, Duncan, Howard, Hunter, Thompson of Jefferson, Patrick, Gaines, Harrison of Loudoun, McIntyre, Brown of Mathews and Middlesex, Edmundson of Montgomery and Pulaski, Breathed, Watts, Harper, McPherson, Newman, Tunstall, Stone, Anderson, Tyler, Sturm, Bare, Brown of Rockingham, Hill of Shenan-

doah, Stickley, Tate, Goodwin, Holladay, Burdett, Gillespie, Honer, Goodson, Stephenson, and Floyd—53.

The question was then, "Shall the main question be now put?" and was determined in the affirmative; thereupon the question was put upon the motion to postpone the said bill indefinitely, and was determined in the affirmative—Ayes 66, noes 56.

On motion of Mr. Stovall, the said vote was recorded as follows:

Ayes—Messrs. Brown of Albemarle, Hart, Layne, Harvie, Powell, McDermon, Sheffey, Johnson, Scruggs, Burwell, Thompson of Botetourt, Bambrick, Harrison of Brunswick, Morris, Mosby, Fox, Dickinson, Lacy, Cardwell, Roane, Hill of Fayette and Nicholas, Evans, Stillman, Street, Carper, Leake, Calwell, Walker, Stovall, Hart, Thompson of Hampshire, Darracott, Lancaster, Dillard, Hunter, Gaines, Gresham, Schooley, Poindexter, Edmondson of Lunenberg, Banks, Haymond, Oldham, Waggoner, Williams, Brown of Monongalia, Beirne, Davis, Tatum, Syme, Perrow, Oliver, Edgington, Lanier, Tunstall, Fairfax, Daniel, Strother, Mayo, Cook, Harper, McElhenney, Morison, Fitzhugh, Burdett, and Castleman—66.

Noes—Messrs. Jones, (speaker,) Custis, Finney, Byrd, Boak, Small, Bennett, Bocock, Slaughter, Irving, Thompson of Dinwiddie, Love, Scott, Smith, Wall, Carson, White, Jones of Gloucester, Carroll, Duncan, Lee, Howard, Thompson of Jefferson, Patrick, Richmond, Ballard, Harrison of Loudon, McIntyre, Brown of Mathews and Middlesex, Edmundson of Montgomery and Pulaski, Breathed, Kelly, Watts, Happer, Yerby, Nelms, McPherson, Newman, Cackley, Anderson, Tyler, Sturm, Bare, Brown of Rockingham, Hill of Shenandoah, Stickley, Tate, Goodwin, Holladay, Freeman, Gillespie, Horner, Goodson Chandler, Stephenson, and Floyd—56.

Resolved, That said bill be rejected.

On motion of Mr. Sheffey, the resolution submitted by him on the fourth instant was taken up and agreed to, as follows:

Resolved, That leave be given to bring in a bill providing for a change of the prescribed route for the extension of the Baltimore and Ohio railroad through Virginia to the city of Wheeling.

Tuesday, February 9th, 1847.

Mr. Sheffey, according to order, presented the following bill:

No. 233. A bill to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia.

Sheffey's bill—Bill No. 233.

A bill to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia.

February 9th, 1847. Read first, to be read second time.

1. Be it enacted by the general assembly, That the Baltimore and Ohio Railroad Company shall

locate and construct the continuation of their railroad through the territory of Virginia so as to pass the Tygart's valley river at or near the Tygart's valley bridge, in Taylor county, and from thence through Glover's low gap in the ridge dividing Pile's fork of Buffalo creek and Fish creek, and thence to a depôt to be established by said company on the northern side of Wheeling creek, in the city of Wheeling, Ohio county, by such route as upon minute estimates to be made after full examinations and instrumental surveys of the feasible or practicable routes, inclusive of that reconnoitred in the year eighteen hundred and forty-four, passing by the way of Wolf run, shall appear to be the cheapest and best upon which to construct, maintain, and to work said railroad; which estimates are to be made upon like principles and plans, in like manner, and upon as great respective amounts of trade and travel, as were adopted and employed in the comparative estimates of the company's chief engineer, laid before the meeting of stockholders of the said company, held in Baltimore on the twelfth day of July, eighteen hundred and forty-five: Provided, That the said railroad shall not be made to enter the valley of the Ohio river at any point further south than the mouth of Fish creek, in Marshall county.

2. Be it further enacted, That to secure to the said city of Wheeling the benefits of the western terminus, all parts of the said railroad between the Monongahela river and said terminus shall be opened for the transportation of freight and passengers simultaneously; and the aggregate charge, toll, and transportation upon freight and passengers respectively, shall be as great as between Baltimore and any point on said road within a direct distance of *twenty-five* miles from the Ohio river as between Baltimore and Wheeling.

3. Be it further enacted, That nothing in this act contained shall be so construed as to entitle said company to any subscription on the part of this Commonwealth to the stock of said company by virtue of any act heretofore passed, and especially by virtue of the several acts passed March twenty-eighth, eighteen hundred and thirty-seven, and April second, eighteen hundred and thirty eight, concerning the said company, which said provisions in said acts are hereby declared to be no longer in force, and of no effect.

4. Be it further enacted, That full right and privilege is hereby reserved to the Commonwealth, or any citizen thereof, or any persons or companies who may hereafter be so authorized by the general assembly, to connect or intersect with the said Baltimore and Ohio railroad within this Commonwealth any railroad, canal, or other road for transportation: Provided, That in forming such connexion or intersection, no injury shall be done to any of the works of the said Baltimore and Ohio Railroad Company.

5. Be it further enacted, That said company shall be subject to the provisions of the act of assembly passed on the eleventh day of March, eighteen hundred and thirty-seven, establishing general regulations for the incorporation of railroad companies, with respect to that portion of their road or other improvements now or hereafter to be constructed within this Commonwealth, so far as the same are properly applicable: Provided, That the Baltimore and Ohio Railroad Company shall not be permitted to charge for transportation or travel to or from Baltimore, from any point east of twenty miles in a direct line from the Ohio river on the road, more in the aggregate than for transportation or travel to Wheeling from Baltimore, or from Wheeling to Baltimore.

6. Be it further enacted, That the stock, property, and profits of said company, so far as the same may be, or accrue within this Commonwealth, shall be subject to general taxation in like manner, and on the same footing with other similar companies within this State: Provided, however, that said taxing power shall not be exercised until, and unless the nett income of the said Baltimore and Ohio railroad shall exceed six per centum per annum upon the capital invested in said road.

7. Be it further enacted, That the general assembly hereby reserves to itself the power of hereafter altering, amending, or modifying any or any part of the provisions of this: Provided, that the rights of property and franchises acquired under this act, and the free use and enjoyment of all their rights and privileges as granted by this or any other former act now in force, shall not be taken away or impaired by any such further act of legislation.

8. Be it further enacted, That as a condition upon which the powers and privileges of this act are

granted, the said Baltimore and Ohio Railroad Company shall enter upon the construction of the said extension of their road, as herein before authorized, within two years from and after the passing of this act, and shall complete the same within twelve years thereafter.

9. This act shall be in force from and after the passage thereof.

Saturday, February 13th, 1847.

On motion of Mr. Hunter, a bill to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia (No. 233) was taken up, and ordered to be postponed, and made the order of the day for Tuesday next.

Mr. Harrison, of Loudon, presented amendments intended to be submitted by him to said bill, which, on his motion, were ordered to be printed.

Bill No. 233.

Amendments offered by Mr. Burr W. Harrison to the bill to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia.

Harrison's amendments.

In 4th section, 3d and 4th lines, strike out the words "within this Commonwealth any railroad, canal, or other road for transportation," and insert the following: "or any branch thereof, either of the said portion of said railroad now constructed, or to be constructed, at any point or points thereof within this Commonwealth, any railroad, canal, or other road for transportation leading to or from said Baltimore and Ohio railroad, or to any branch thereof, from or to any other part or parts of this Commonwealth; and that all reasonable facilities for the full and free enjoyment of the benefit of such connexion or connexions shall at all times be afforded by the said Baltimore and Ohio Railroad Company; and that the charge upon any and all descriptions of freight and passengers from or to said point or points of connexion, whether the said freight and passengers be going eastward or westward, or be transferred to or received from said railroads, canals, or other roads so connected, or hereafter to be connected, shall be at the same rates per mile usually charged upon like freight and passengers conveyed from one terminus of said Baltimore and Ohio railroad to the other. And

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upon failure to receive and transport any such freight and passengers according to their turn, upon payment or tender of the lawful or customary tolls, or to furnish usual and necessary facilities, the said Baltimore and Ohio Railroad Company shall be liable to all the penalties prescribed and provided for offences or defaults of like kind in the twenty-second section of the said general act, entitled "An act prescribing certain general regulations for the incorporation of railroad companies," to be recovered in the manner therein provided, or by any action, suit, or motion in any of the courts of this Commonwealth having jurisdiction of the subject.

After the eighth section insert the following:

9. Be it further enacted, That the said Baltimore and Ohio Railroad Company shall, within six months after the passage of this act, establish a depôt at the Chesapeake and Ohio canal basin, situated between lock number thirty-two and the Shenandoah outlet lock in said canal, or as near thereto as practicable; and shall also allow switches to be put in, with sidelings and branch tracks, to be connected from time to time with said switches, to be constructed at the expense of the said Chesapeake and Ohio Canal Company, for the purpose of accommodating and facilitating, in the most ready and economical manner practicable, the transfer of passengers and goods, produce, merchandise, or property of any description whatever, from the said railroad to the canal, and from warehouses that may from time to time be there erected by said canal company, or individuals, or others, for the accommodation of the trade on the canal, and from the canal and said warehouses to the said railroad; and that the said Baltimore and Ohio Railroad Company shall also, within six months from the time of the completion of the said Chesapeake and Ohio canal to Cumberland, establish in like manner a depôt at the Chesapeake and Ohio canal basin at Cumberland, and also at such other point or points within the limits of this Commonwealth, along or near the line of the said Baltimore and Ohio railroad, as [may] hereafter, by act of the general assembly of this Commonwealth, be prescribed; and shall allow all necessary switches, with sidelings and branch tracks, to be connected from time to time with the said switches as aforesaid, to be constructed at

the expense of said Chesapeake and Ohio Canal Company for the purposes aforesaid. And that the said Baltimore and Ohio Railroad Company shall, after any one of such depôts, switches, sidelings, and branch tracks shall have been constructed at any point or points aforesaid, afford all and every facility for the accommodation of the said transfer as aforesaid that may be usual, and that may be afforded to the general trade and business of the said railroad at other depôts along the said road, and that the charges for toll and transportation on all goods, produce, merchandise, or property of any description, and passengers, transported by the said Baltimore and Ohio Railroad Company upon their said railroad, and which may be transferred from canal boats to the said railroad, or from the said railroad to the canal, at either of said depôts, sidelings, or warehouses aforesaid provided for, shall be at no higher rate per ton per mile for tonnage, or per mile for passengers, for the distances respectively that they may [be] carried on said railroad, than the average rate per ton per mile charged on similar articles respectively, or per mile for passengers, than the rates charged for passengers by the said railroad company for like distances on the other parts of the said railroad, or from one terminus thereof to the other. And in case the said Baltimore and Ohio Railroad Company shall fail to comply with the conditions and directions of this section, and at any time violate the same, or *or* either of them, in whole or in part, then and in that case the charter, and rights and privileges by this act granted shall cease and determine, and be null and void thenceforth.

Tuesday, February 23d, 1847.

No. 233. A bill to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia was taken up; thereupon Mr. Sheffey, with the leave of the house, withdrew his amendment, and a substitute was proposed for said bill by Mr. Hunter, and an amendment to the said substitute was submitted by Mr. Edgington; and the same being under discussion, on motion of Mr. Stephenson, the house adjourned until to-morrow, 11 o'clock.

Wednesday, February 24, 1847.

No. 233. A bill to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory

of Virginia, with the substitute thereto proposed by Mr. Hunter, and the amendment thereto submitted by Mr. Edgington, was taken up.

The first section of the substitute is the following:

"Be it enacted by the general assembly, That the Baltimore and Ohio Railroad Company be, and they are hereby, authorized to complete their road, through the territory of this Commonwealth, so as to terminate the same on the northern side of Wheeling creek, in the city of Wheeling, in the county of Ohio: Provided, however, that they shall not be permitted to strike the Ohio river at a point lower down than at or near the mouth of Fishing creek, in the county of Wetzel: And provided further, that the said road shall be constructed to and by way of a point on the Tygart's valley river at or not further than three miles from the mouth of Three Fork creek, in the county of Taylor."

The said amendment proposed to strike out the words in italics, and insert in lieu thereof the following:

"To pass from a point in the ravine of Buffalo creek at or near the mouth of Pile's fork to a depôt to be established by said company on the northern side of Wheeling creek, in the city of Wheeling, in Ohio county, by such route as, upon minute estimates to be made, after full examinations and instrumental surveys of the feasible or practicable, shall appear to be the cheapest upon which to construct, maintain, and work said railroad; which estimates shall be made on like principles and plans, in like manner, and upon as great respective amounts of trade and travel, as were adopted and employed in the comparative estimates of the company's chief engineer, laid before the meeting of the stockholders of the said company, held in Baltimore on the twelfth day of July, eighteen hundred and forty-five; provided, that said railroad shall not be made to enter the ravine of the Ohio river at any point further south than the mouth of Fish creek, in Marshall county; and provided, that if the said railroad, by the cheapest route to the city of Wheeling which shall not enter the ravine of the Ohio river at any point south of Grave creek, in Marshall county, shall appear from the estimates to be made as aforesaid to be more costly to construct, maintain, and work, than it would be by the route passing into the ravine of the Ohio river at or near the mouth of Fish creek, and thence to the city of Wheeling; and if, when the difference of probable cost between said two routes shall be ascertained as aforesaid, the city of Wheeling shall agree to pay to said railroad company such difference of cost by the time said railroad shall be completed and opened for transportation to said depôt in Wheeling, (which payment it shall be lawful for the said city of Wheeling to provide for and make,) then the said railroad company are hereby required to locate and construct their said railroad so that in passing to said depôt in Wheeling it shall not enter the ravine of the Ohio river at any point south of Grave creek.

"Be it further enacted, That to secure to the said city of Wheeling the benefits of the western terminus, all parts of the said railroad between the Monongahela river and said terminus shall be opened for

transportation of freight and passengers simultaneously; and the aggregate charge for toll and transportation, upon freight and passengers respectively, shall be the same between Baltimore and any point on said road within a direct distance of five miles from the Ohio river as between Baltimore and Wheeling."

The amendment being under discussion, Mr. Cook demanded the previous question, and it was sustained by the house; and the question being put upon the adopting said amendment, was determined in the affirmative—ayes 66, noes 57.

On motion of Mr. Edgington, the vote was recorded, as follows:

Ayes—Messrs. Custis, Brown of Albemarle, Hart, Powell, McDermon, Scruggs, Burwell, Thompson of Botetourt, Bambrick, Maclin, Harrison of Brunswick, Morris, Mosby, Fox, Dickinson, Lacy, Cardwell, Roane, Love, Hill of Fayette and Nicholas, Evans, Stillman, Street, Carper, Leake, Calwell, Stovall, Hiett, Thompson of Hampshire, Darracott, Lancaster, Dillard, Goodwin, Thompson of Jefferson, Patrick, Gaines, Gresham, Oldham, Richmond, Schooley, Poindexter, Edmondson of Lunenberg, Waggoner, Williams, Brown of Monongalia, Beirne, Oliver, Edgington, Davis, Tatum, Syme, Lanier, Tunstall, Cackler, Cocke, Anderson, Daniel, Strother, Mayo, Harper, McElhenny, Morison, Horner, Castleman, and Stephenson—66.

Noes—Messrs. Jones, (speaker,) Finney, Layne, Sheffey, Johnson, Byrd, Boak, Small, Bennett, Bocock, Slaughter, Thompson of Dinwiddie, Chisman, Scott, Smith, Wall, Carson, White, Jones of Gloucester, Carroll, Major, Lee, Duncan, Howard, Hunter, Wallace, Ballard, Harrison of Loudon, McIntyre, Haymond, Breathed, Kelly, Newton, Watts, Happer, Yerby, Nelms, McPherson, Newman, Fairfax, Tyler, Sturm, Cook, Dorman, Bare, Brown of Rockingham, Hill of Shenandoah, Stickley, Tate, Goodwin, Holladay, Hargrave, Freeman, Burdett, Gillespie, Chandler, and Floyd—57.

The said substitute was then further amended on motions severally made by Messrs. Edgington, Duncan, and Hunter, and as amended was agreed to; and the said bill as amended was ordered to be engrossed and read a third time.

Friday, February 26, 1847.

No. 233. An engrossed bill to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia, was read a third time and passed.

Ordered that Mr. Edgington carry the same to the senate and request their concurrence.

Saturday, March 6, 1847.

A communication was received from the senate by their clerk, which was read as follows:

In Senate, March 5, 1847.

The senate have passed the bill, entitled "An act to authorize the Baltimore and Ohio Railroad Company to construct the extension of

their railroad through the territory of Virginia," (No. 233,) with an amendment, in which they request the concurrence of the house of delegates.

The said amendment being twice read, was agreed to, and it was ordered that the clerk inform the senate thereof.

And also the laws of Virginia, of 1845 and 1846, relative to the Baltimore and Ohio Railroad Company.

Act of Assembly of Virginia, 1845.

Chap. 88. An act to authorize the Baltimore and Ohio Railroad Company to complete their road through Virginia to the Ohio river, and for other purposes. [Passed February 19th, 1845.

1. Be it enacted by the general assembly, That the Baltimore and Ohio Railroad Company be and they are hereby authorized to construct their road, in whole or in part, through the territory of this State, so as to terminate and strike the Ohio river at the city of Wheeling, in the county of Ohio.

2. Be it further enacted, That from and after the tenth day of March, eighteen hundred and forty-six, through tickets for persons travelling on the Washington branch, and upon any railroad in Virginia on the line of the northern and southern railroads between Washington and the Roanoke, shall be given and received on the said Washington branch, in connexion with any or all of the railroad companies on the said line which may desire the said through tickets to be given and received; and where passengers shall desire the said through tickets, at a charge per mile for passengers and their baggage, on the said Washington branch, not exceeding four cents per mile for first class passengers; and if the foregoing condition at any time be broken by the said company, the whole of the rights and privileges given by this act shall thenceforth cease and determine.

3. Be it further enacted, That nothing in this act contained shall be so construed as to entitle the said company to any subscription on the part of the Commonwealth to the stock of said company; nor shall any part of this act be so construed as to entitle said company to the subscription, or any part thereof, on the part of the Commonwealth, to the stock of said company, as provided for in the several acts passed March the twenty-eighth, eighteen hundred and thirty-seven, and April the second, eighteen hundred and thirty-eight, concerning the said company, which said provisions in said acts are no longer in force or of any effect.

4. Be it further enacted, That full right and privilege is hereby reserved to this Commonwealth, or to any citizen thereof, or any persons or companies who may be hereafter so authorized by the general assembly to connect or intersect with the said Baltimore and Ohio railroad within this Commonwealth, any railroad, canal, or other road for transportation: Provided, That in forming such connexion or inter-

section, no injury shall be done to any of the works of the said Baltimore and Ohio Railroad Company.

5. Be it further enacted, That said company shall be subject to the provisions of the act of assembly, passed on the eleventh of March, eighteen hundred and thirty-seven, establishing general regulations for the incorporation of railroad companies, with respect to that portion of their improvement now, or to be, constructed within this Commonwealth, so far as the same are properly applicable: Provided, That said Baltimore and Ohio Railroad Company shall not be permitted to charge for transportation or travel to or from Baltimore, from any point east of Cumberland, on the road more in the aggregate than for transportation or travel to or from Cumberland to Baltimore, and the like rules and regulations shall apply to that portion of the road west of Cumberland.

6. Be it further enacted, That the stock, property, and profits of the said company, so far as the same may be or accrue within this State, shall be subject to general taxation in like manner with other similar companies.

7. Be it further enacted, That upon the acceptance of all the terms and provisions of this act, the Baltimore and Ohio Railroad Company shall take, hold, use, and exercise the railroad, franchises, property, and rights of the Winchester and Potomac Railroad Company, subject to the obligations and responsibilities, and entitled to the rights and privileges, imposed and conferred by the charter and all other laws now in force concerning the said Winchester and Potomac Railroad Company, except that the second section of the act passed the twenty-fifth day of February, eighteen hundred and forty-one, entitled "An act concerning the Baltimore and Ohio Railroad Company," shall be and the same is hereby repealed.

8. Be it further enacted, That the surrender of the said road and other property of the Winchester and Potomac Railroad Company, to the said Baltimore and Ohio Railroad Company, shall be made on the tenth day of March, eighteen hundred and forty-six, or such earlier day as the two companies may agree upon, and at the time of such surrender the said Baltimore and Ohio Railroad Company shall pay or satisfy all the debts of the Winchester and Potomac Railroad Company, except the loan by the Commonwealth; the amount of which debts, to be so paid, shall not exceed the sum of eighty-one thousand dollars, and any excess beyond that sum is to be satisfied and paid out of the first payment of the annuity to the private stockholders hereinafter provided for. A sum equivalent to six per centum upon the amount of debts so paid or satisfied, is to be deducted from the annuity of sixteen thousand dollars, which is the price agreed upon for said road and property, and the residue of said annuity of sixteen thousand dollars is to be paid semi-annually, except that the first payment to be made at the end of the year after possession taken; that is to say, the whole annual sum to be paid at the end of the first year, and afterwards the half to be paid at the end of every six months; and the

said annuity may be redeemed by the Baltimore and Ohio Railroad Company at any time after the year eighteen hundred and seventy, at the rate of six per cent.

9. Be it further enacted, That the interest of the Commonwealth in said Winchester and Potomac Railroad Company, consisting of the two-fifths of the capital stock originally subscribed, and the loan heretofore made to the company, with interest thereon computed to the first day of January, in the present year, amounting in the whole to the sum of three hundred and fourteen thousand four hundred and sixty dollars, shall be placed upon the same footing with the private stock held in said company, and the reduced annuity (after the payment of the floating debt of the said company) shall be divided between the State and the private stockholders in the proportion of their said respective interests; that is to say, in the proportion, three hundred and fourteen thousand four hundred and sixty dollars, the whole interest of the State, to the sum of one hundred and eighty thousand dollars, the interest of the private stockholders. The said Baltimore and Ohio Railroad Company shall execute and deliver to the board of public works of Virginia the bond of said company, in the penalty of two hundred thousand dollars, payable to the treasurer of this Commonwealth, and his successors in office, condition for the payment to the said treasurer, and his successors, at his office in Richmond, of the amount of said annuity ascertained to be coming to the State, as aforesaid; and shall, moreover, execute and deliver to said treasurer, as collateral security for the punctual payment of said annuity, a mortgage upon said Winchester and Potomac railroad, and the other property included in the mortgage, at present held by the State, duly acknowledged and certified for record, free and clear of any prior lien or incumbrance. Upon the delivery of such bond and mortgage, but not before, all other claim or claims of the Commonwealth, in or upon the said Winchester and Potomac Railroad Company, and upon said road, and other property, as stockholders and as creditors, secured by bond, mortgage, or otherwise, shall be, and the same are hereby, released and discharged.

10. Be it further enacted, That the said Baltimore and Ohio Railroad Company, at the time possession is taken of said railroad, shall execute and deliver to such agent, as may be appointed by the Winchester and [Potomac] Railroad Company, a bond in the penalty of one hundred thousand dollars, payable to such agent, and conditioned for the punctual payment in Winchester, to such agent, of the amount of said annuity as ascertained to be coming, as aforesaid, to the private stockholders of said company, and any further security which may be agreed upon by said companies. And said stockholders may, at the meeting at which they confirm the sale of the road, or at any subsequent meeting, adopt regulations for the security of the payment by their agent punctually to each shareholder, or his assignee, of their respective interests; for the mode of assigning the shares; for the change of the agent, and such other matters as may be necessary or proper to protect and secure their said interests.

11. Be it further enacted, That a meeting of the stockholders of the Winchester and Potomac Railroad Company shall be called according to the by-laws, rules, or regulations of the company, to take place on the first Saturday in August next, or a special meeting of the stockholders may be called, upon sixty days' notice thereof; at which meeting a vote shall be taken to accept or reject the contract for the sale of their road and property referred to in this act. If the said company shall reject the same, then all the terms and provisions of this act relative to the said Winchester and Potomac Railroad Company shall be void and of no effect, and the said Baltimore and Ohio Railroad Company shall only be required to accept or reject the other terms and provisions contained in this act.

12. Be it further enacted, That in case the said sale of the Winchester and Potomac railroad is confirmed and completed, then the said Baltimore and Ohio Railroad Company shall be, and they are hereby, authorized to change the present location of the Winchester and Potomac railroad, by discontinuing that portion of the same lying between the terminus *as* Harper's Ferry and any point on said road east of Charlestown, and constructing a new track from such point to intersect the main stem of the Baltimore and Ohio railroad at some point not further west than Duffield's depôt, in Jefferson county; provided, however, that the distance from Harper's Ferry to Winchester, for which transportation shall be charged, shall not be increased. Nor shall any of the depôts heretofore used or erected on the Winchester and Potomac railroad be discontinued in consequence of such change; but all the facilities heretofore extended for the conveyance of freight and passengers shall be continued and perpetuated by the said railroad company.

13. Be it further enacted, That the stockholders of the Baltimore and Ohio Railroad Company shall, on or before the tenth day of March, eighteen hundred and forty-six, adopt and accept in binding form all the terms and provisions of this act, (except in case of their rejection by the Winchester and Potomac Railroad Company, the provisions relating to the sale of their road and property,) and shall certify their said acceptance to the Board of Public Works of Virginia, which acceptance and certificate shall be a condition precedent to the rights and privileges by this act granted.

14. Be it further enacted, That the legislature hereby reserves to itself the power of hereafter altering or modifying any, or any part, of the provisions of this act: Provided, That the rights of property and franchises acquired under this act shall not be taken away or impaired by any further act of the legislature.

15. Be it further enacted, That the said Baltimore and Ohio Railroad Company shall, within six months after accepting the provisions of this act, establish a depôt at the Chesapeake and Ohio Canal basin, situated between lock number thirty-two and the Shenandoah outlet lock in said canal, or as near thereto as practicable; and shall also allow switches to be put in with sidelings, and branch tracks to be con-

nected from time to time with said switches, to be constructed at the expense of the said Chesapeake and Ohio Canal Company, or of others with their permission, for the purpose of accommodating and facilitating, in the most ready and economical manner practicable, the transfer of goods, produce, merchandise, or property of any description whatever, from the railroad to the canal, and to warehouses that may be from time to time there erected by individuals or others for the accommodation of the trade on the canal, and from the canal and said warehouses to the said railroad. And the said Baltimore and Ohio Railroad Company, after the extension of their road west to Cumberland and the completion of the Chesapeake and Ohio Canal to Cumberland, shall, within six months from the time of such completion, establish in like manner a depôt at the Chesapeake and Ohio Canal basin at Cumberland, and shall allow switches, with sidelings and branch tracks, to be connected from time to time with the said switches as aforesaid, to be constructed at the expense of the said Chesapeake and Ohio Canal Company or others, with their permission, for the purposes aforesaid. And the said Baltimore and Ohio Railroad Company shall, after any one of such depôts, switches, sidelings, or branch tracks shall have been constructed at any point as aforesaid, afford all and every facility for the accommodation of the said transfer as aforesaid, that may be usual, and that may be afforded to the general trade and business of the railroad at the other depôts along the said road.

16. And be it further enacted, That the charges for toll and transportation on all goods, produce, merchandise, or property of any description whatever, or on passengers transported by the said Baltimore and Ohio Railroad Company upon their said railroad, and which may be transferred from canal boats to the said railroad, or from the said railroad to the canal, at either of the depôts, sidelings, or warehouses, mentioned and provided for in the preceding section of this act, shall be at no higher rate per ton per mile for tonnage, or per mile for passengers, for the distances respectively that they may be carried on the said railroad, than the average rate per ton per mile charged on similar articles respectively, or per mile on passengers, than the rates charged by the said railroad company for like distances on the other parts of the said railroad.

17. Be it further enacted, That, as a condition on which the powers and privileges of this act are granted, the said Baltimore and Ohio Railroad Company shall so far complete their said road as to open the same for travel and transportation, from the city of Baltimore to the said city of Wheeling, within ten years from the passing of this act; and no part of this act shall be so construed as to authorize or permit the said company to construct their said railroad, or any branch thereof, to any point on the Ohio river below the said city of Wheeling. But no failure of the said company to complete their [road] to the Ohio river, within the period prescribed, shall operate to invalidate any contract which may be made by them under the provisions of this act for the purchase and perpetuation of the Winchester railroad.

Chap. 115.

An act supplementary to and amendatory to the act entitled "An act to authorize the Baltimore and Ohio Railroad Company to complete their road to the Ohio river, and for other purposes," passed February 19th, 1845. [Passed February 28th, 1846.]

Act of Assembly of Virginia of 1846.

1. Be it enacted by the general assembly, That so much of the thirteenth section of the act of the nineteenth of February, eighteen hundred and forty-five, entitled "An act to authorize the Baltimore and Ohio Railroad Company to complete their road to the Ohio river, and for other purposes," as requires the said company to adopt and accept the said act on or before the tenth day of March, eighteen hundred and forty-six, before they shall enjoy the benefits of that act, be, and the same is hereby, repealed; and the said company are hereby allowed ten years from the tenth day of March, eighteen hundred and forty-seven, to complete their railroad to the city of Wheeling, according to the terms and conditions of the said act of the nineteenth day of February, eighteen hundred and forty-five, except as is provided for in this act: Provided, That the said company shall enter upon the construction of their said road within three years from the passing of this act.

2. And be it further enacted, That, with the assent and agreement of the Winchester and Potomac Railroad Company, the said Baltimore and Ohio Railroad Company are hereby permitted and allowed to purchase, take, and accept the Winchester and Potomac railroad, in pursuance of the seventh, eighth, ninth, tenth, eleventh, and twelfth sections of the said act of the nineteenth of February, eighteen hundred and forty-five, relating to the Winchester and Potomac railroad.

3. And be it further enacted, That the taxing power reserved in the sixth section of the said act of the nineteenth of February, eighteen hundred and forty-five, shall not be exercised until and unless the nett income of the said Baltimore and Ohio railroad shall exceed six per centum per annum.

4. This act shall be in force from the passing thereof.

And also the following passages from the report of the board of directors of said company to the stockholders of October, 1847, being their 21st report, and from the report of the committee of the company accompanying that report, and the maps accompanying:

Extract from the 21st annual report.

Second—Of the Washington road.

The affairs of the Washington road are shown by the statements D and E.

It will appear from these statements that there has been a falling off in the receipts from this road, and that the diminution has been in the passenger traffic. During the past year the number of passengers has

been five thousand four hundred and three less than in the year 1846, and the amount of revenue received from this source has been eleven thousand eight hundred and nineteen dollars less than in the preceding year. It may also be stated, that during the past year there was an increase in tonnage transportation of 3,109 tons, and $2,198 87 in the revenue from that source over the year 1846 It may be inferred, therefore, that the experiment of a reduced charge, authorized by the board in the year 1845–46, has not realized the expectations by which it was recommended; and the conclusion would seem to be warranted that the lowest charges do not uniformly increase the amount of travel. It will, therefore, become the duty of the board to reconsider the subject, with the benefit of the experience they have already had, and to make such addition to the present charges as a full investigation may be found to authorize. The nett profits from the Washington road, for the last six months, including the surplus of $6,724 19, remaining after the dividend in April last, amount to the sum of $48,131 66, of which the board have declared a further dividend for the last six months of $2 50 upon each share of stock; leaving a surplus of $6,881 66 to be carried to the account of the current year.

Third—Of the further prosecution of the road to the Ohio river.

Under this head the board are gratified to be enabled to congratulate the stockholders, that by their action on a recent occasion one of the obstacles that has hitherto retarded the extension of the road to its ultimate destination has been removed.

By an act of the legislature of the State of Virginia, passed at the last session, the grant of the right of way through that State has been renewed for a period of twelve years, upon condition that the road shall be extended to the city of Wheeling without touching the river at a point lower down than the mouth of Fish creek; and, according to the agreement with that city, the option of extending the road by the latter point is absolute. The board is not aware that, until very recently, any diversity of opinion existed with the public authorities, or in the community at large, of the expediency of extending their road to a southern point on the Ohio, from which they could, with the least competition, command the trade and travel passing up the river, and most certainly form connexions, with the improvements of Ohio, upon both the central and southern lines, on which they have been projected in this State. And the board do not doubt that it is the clear, unquestionable policy and duty of the stockholders, of the State, and especially of this city, by the extension of their road to a southern point on the river, to attract the western improvements from any other point to which they might possibly be diverted, and at which they would be brought within the attraction of the rival cities north of Baltimore. A connexion with the western roads in the State of Ohio, upon either the central or southern line, in that State, would be indispensable to the success of this enterprise, and its ultimate object could be most effec-

tually obtained by extending it so as to connect with both, and without the risk of competition with the northern rivals. In the earlier history of the company, greater reliance than at present was placed upon the river trade and travel, and the city of Wheeling was considered by the projectors of the road as not only commanding these, but at the same time ensuring a connexion with the railroads on the central line of the Ohio improvements. In all the applications of the company for the right of way through the State of Virginia since the year 1842, however, the company have asked for the option of extending their road to any point on the Ohio within that State they might select above the mouth of the Kanawha, intending, undoubtedly, to terminate it at some point within that range of choice. Within those limits the selection must have been, and was expected to be, regulated so as to ensure a connexion with the Ohio improvements both on the central and southern lines; and it would have been necessary to avoid a terminus so far south as might force the improvements on the central line to a more northern point on the river, beyond the reach of this road. It had been, until recently, supposed that the mouth of Fishing creek, twelve miles below Fish creek, presented the best medium point for both purposes; and the impression generally prevailed, that while the improvement on the southern line in Ohio could certainly connect more advantageously at Fishing creek, those on the central line could also be more easily formed at that point than at Wheeling. From subsequent information, however, it would appear that the central improvements in Ohio may connect with this road on the river as advantageously at Wheeling as at Fishing creek; while it is certain that the improvements projected on the southern line might form a connexion at Fish creek without increasing their length, or the distance between Cincinnati and Baltimore more than twelve miles. The distance from Cincinnati to Baltimore on the southern line through Ohio, by the mouth of Fishing creek, may be stated at 600 miles, and to New York, 800 miles, and to Baltimore, by way of Fish creek, 817 miles, and to New York, by the same point, 817 miles; while, therefore, from Cincinnati to New York, by the way of Fishing creek, the distance would be 139 miles less through Baltimore than by the northern r ate projected to New York, the distance to New York by the way of Fish creek would be still 92 miles nearer through Baltimore than by the northern route. In this view of the subject, and deeming it inexpedient to hazard the extension of their work upon the future legislation of Virginia, the board thought the prosecution of the road to Wheeling by the mouth of Fish creek would ensure, effectually, a connexion with the Ohio works, on both the lines projected in that State, and still enable them to maintain a successful competition with New York.

They do not consider that the projectors of either of the lines in the State of Ohio should attempt or expect to exclude the other from a connexion with this enterprise at a point most acceptable to it; and the arrangement this company have made with the city of Wheeling, and by accepting the Virginia law subject to its provisions, it must be

conceded that the board and the stockholders have made a better compromise, and accomplished more for those interested in the southern line of improvement, than the same parties have been able to effect in any other way. It is to be observed, moreover, that the cost of the work to the Ohio, by Fish creek, will not be greater than to Fishing creek; and that, with the aid of subscription of half a million of dollars, and the gratuitous grant of a depôt and right of way to be contributed by Wheeling, the company will not have less ability to execute their engagement with the authorities of that city than if they had succeeded in their object of terminating the road at Fishing creek.

It may be assumed, therefore, that in accepting the Virginia law, and confirming the agreement with the city of Wheeling, the stockholders have not only consulted the interests of the several companies engaged in making the improvements on the southern and central lines of Ohio, and ensured the connexion of both with their road, but have acquired the right of reaching the Ohio at the point originally contemplated by the State and the city, with the additional and important privilege of extending it twenty-eight miles lower down the river than they originally desired to do, or could have done, at any time since the spring of 1838. They may thus be enabled to accomplish their original object without the necessity of constructing a rival branch to their main stem, thereby attracting the travel and trade to a rival city; while, by encouraging a connexion of their road with the improvements on the southern line in Ohio, they offer new inducements to the works on the central line to form a similar connexion, in preference to longer and more expensive lines to any northern point.

Looking to these objects, it will now be in the power of the company, by a vigorous and energetic prosecution of their road, in conformity with the law and the agreement with the city of Wheeling, speedily to realize all that has ever been hoped from the enterprise.

It is not to be concealed, however, that for the accomplishment of this object the united and cordial co-operation of those interested in the prosperity of the company and this city, will be needed; and the board will not doubt that it will be effectively afforded. For twenty years the stockholders, under the auspices of the State and the city, have been exerting all the means at their command to extend the main stem of the road to a point on the Ohio not farther north than Wheeling, and in 1835 the State and city proposed a liberal amount of aid to effect that object. The universal depression in the public credit which soon followed those efforts, and the expiration of the time limited in the acts of Virginia and Pennsylvania, temporarily defeated the purpose. For the last ten years no exertion has been spared to obtain a renewal of the right of way within the limits of the original Virginia grant. These exertions have finally resulted in a choice of routes less restricted than that accepted in 1838, and not only in confirming the terminus deliberately and definitively adopted in that year, but in enlarging the route so as to embrace a more southern point accessible to connexions which might not have been commanded from Wheeling.

For the accomplishment of this enlarged and more comprehensive object, there will be less distance, and fewer difficulties to overcome, and a less amount of capital to be employed, than would have been necessary if the work had been extended under the laws in force from 1838 to 1843; and it is not to be presumed, that having succeeded to an extent so much beyond their early hopes and expectations, any of those who have heretofore deemed the completion of the enterprise so essential to the prosperity of Baltimore, will abate any of their zeal and energy. The board would have greatly mistaken the objects and purport of the trust confided to them, if, succeeding in their efforts, after so much toil and so many discouragements, they were not cordially supported in the prosecution of their work; and the stockholders, if they neglected or failed in the necessary energy to use the opportunity they have deliberately sanctioned, would, in all reasonable probability, forever prevent the extension of the road to any point west of Cumberland. There is no occasion, and the board have no disposition to arraign opinions which, amid the uncertainty and discouragement of obtaining the right of a terminus at a southern point, may have grown up in any quarter favorable to a different and more northern line. So far as such opinions may have sincerely desired an early prosecution of the road to the western waters, and from the apprehension that, either from the want of authority, or of adequate means, the best would not be accessible to the company, advocated the adoption of an inferior line, rather than not go forward, they may be entitled to respect.

Opinions of this description, however, have no longer any reasonable pretext for their maintenance, more especially if an unreasonable persistance in them would most probably entail upon the company even greater mischief than they professed to avert. It is impossible that the subject could have been more thoroughly investigated, or more maturely considered, by all that could be expected to take an interest in it. In the various and elaborate discussions to which, through a period of ten years, it has given rise in the legislature of a sister State, and the mass of facts and information developed in the course of an intelligent and free examination of its merits in this community, every thing that could assist the mind, in forming a sound conclusion, has been elicited. The board are not at liberty to suppose that those who have been called to pronounce their final judgment upon a subject of so much importance, and so deeply involving public and general interests, could be guided by any other considerations than those identified with the successful prosecution of their enterprise, and with the trade and commercial prosperity of this city; and to say that those by whom the ultimate decision was made thoroughly knew and comprehended the advantages on one side, and the hazards upon the other, and perhaps more than any others would seriously suffer from a mistaken course, would only be to say what would be felt and acknowledged by all.

The present enterprise in charge of the stockholders may emphatically be said to be essentially a work upon which the prosperity of Baltimore is dependent. It has already absorbed three millions of

capital of individuals interested in the prosperity of the city, and three and [a] half millions of that of the corporate authorities, to be justified only by such an extension of the road as would increase the trade and augment the value of every species of property; and it must not be overlooked that, of the assessment, in any form whatever, that may be necessary to refund to the State the annual interest upon her loan to the company, a full moiety, at least, must be borne by the authorities and people of Baltimore. In such a case, therefore, whatever diversity of opinion might at any time have prevailed in quarters and upon grounds already alluded to, it would be only reasonable and just towards all the great interests involved, after a final decision of the subject by so large a majority, that all interests would unite in rendering the decision effectual.

It is a great misfortune that ten years have already been spent in seeking the right to extend the road to the Ohio; but if, after obtaining it upon terms satisfactory to a large portion of those principally and substantially interested, ten years more are to be wasted in controversies respecting a route, or in excited struggles to reverse the decision already made, it would not only add to the misfortune of the past; it would be, in every view of the subject, fatal. In the present condition and progress of improvements in other States, a stationary policy upon the part of this community could not be otherwise than fatal to their prosperity. If they do not now make an effort to extend their great work to the Ohio, other States will soon complete their exertions to attract the trade and travel to the west into other channels, and to cities of greater capital and other advantages, from which we will not be likely at any future day to divert them. That all the advantages, and any amount of trade that could ever have been anticipated from the extension of the road to the Ohio, may be commanded, and at no greater cost, by the route, and at the point selected by the stockholders, has not been and cannot be denied; and if any attempt to embarrass that selection, by active opposition or withdrawal of support, by ultimate defeat, or unreasonable delay, can end in any thing short of a total destruction of all the great objects of the enterprise, the board have not been able to conjecture it. For an object of such magnitude, therefore, appealing to so many interests, promising so many advantages, which in fact is so necessary to the commercial prosperity of Baltimore, and to the development of such an important region of the State that could not be developed by any other line of road, the board must continue to rely upon the cordial co-operation of all those interests which it has been their constant aim to promote.

Thoroughly impressed with a sense of their own duty in this posture of their affairs, the board are prepared to exert their utmost resources and energies to press forward their work in good faith, in conformity with the authority now conferred upon them, and pursuant to the arrangement with the city of Wheeling. Their first duty, and the first measure devolved upon them, will be by minute instrumental surveys to discover and adopt the cheapest and best line, and to obtain the

right of way, and to establish the location preparatory to the requisite contracts. Several parties of engineers are now in the field, and it is hoped that the surveys on the preferred route through this State to the Virginia line may be completed during the present year. It would undoubtedly be the duty, and is the wish, of the board to extend the road from the city of Cumberland to Wheeling in part through this State, rather than confine it, as they may do, entirely to the State of Virginia. It has already been hinted that the extension of the road upon the line through Maryland would immediately develope the coal and iron deposites near the Potomac, and the important agricultural resources of the glades, which would be wholly neglected by a line through Virginia, or even through another part of this State, in pursuit of a more northern terminus. On this ground, as well as to accelerate the completion of the surveys and the progress of the work, the route through Maryland ought to be preferred. If, however, from any sufficient cause whatever, the board should be called to leave the State of Maryland, and confine their route to the State of Virginia, their operations would only be retarded. In any event, they will indulge the hope of being able to complete the surveys and final arrangements for the right of way, so as to locate the line from Cumberland to Wheeling, and place it under contract in the course of next season.

It will be the duty of the board to employ the interval in devising the means and effecting their financial arrangements to prosecute the work with the l[e]ast possible delay; and although they deem it premature at this time and in this place to advert in detail to the various sources and modes of arrangement from which they expect to obtain the means of prosecuting and finishing the road, they have reason to hope that the measures they have in contemplation for those objects will not be unsuccessful. They indulge only a reasonable confidence, moreover, in believing that they will have at their command available and important resources, which may be obtained for the prosecution of the road authorized by the Virginia law and the arrangement with Wheeling, that could not by possibility be commanded in aid of a road to a more northern point on the Ohio; and they cherish the hope that the temptation they will be enabled to offer to capital, and the just appeal they may make to all the great interests involved in the accomplishment of the work, will not be made in vain.

In conclusion, the board can only promise the faithful and energetic performance of so much of the duty appertaining to the prosecution of the work as is devolved upon them. If, after this, the enterprise be destined to failure, the board, at least, will stand acquitted.

In connexion with this subject, and in further explanation of the recent law of Virginia, and the agreement with the city of Wheeling, as well as for the purpose of bringing together the present state of the company's affairs, and the general grounds upon which the stockholders may be supposed to have their recent decision, the board have deemed it expedient to append to this report the report and documents

accompanying it of the committee by whom the arrangement with the city of Wheeling was concluded.

By order of the board: LOUIS McLANE,
President.

October 1st, 1847.

Extract from the report of the committee.

Extract from the report of the committee.

The committee appointed by the President, under the authority of the board at their stated meeting on the 14th of April last, to confer with the authorities of the city of Wheeling respecting modifications of the recent law of Virginia relative to the right of way through that State, passed the 6th day of March, 1847, report that they promptly and diligently engaged in the duty confided to them. They proceeded to Wheeling, in company with the President, on the 29th of April, and while there had several conferences with a committee on the part of that city, and were also met at that place by several eminent gentlemen from Columbus, Zanesville, Steubenville, and St. Clairsville, in the State of Ohio, representing important sections of that State, and having a deep interest, and taking a lively concern, in the extension of the Baltimore and Ohio railroad to the Ohio river; and who were deputed to make known the views and wishes of the parts of the State represented by them as to the terminus on the Ohio river that would most certainly ensure the western connexions with Zanesville, Columbus, and Cincinnati, and attract to the road the trade and travel from those points and the country connected with them.

During their conferences at Wheeling it was discovered, that previously to concluding any arrangement upon the subject of their mission, it would be necessary to direct particular examinations of the several routes authorized by the present law to be made by the chief engineer of the company; and, returning to Baltimore on the 7th of May, they despatched Mr. Latrobe upon that duty at as early a day as his engagements would permit him to be absent from the office. He proceeded to make the necessary examinations, and returned to this city on or about the 26th of June, and immediately afterwards the committee on the part of Wheeling came to Baltimore and resumed the negotiations in which *in which* we had been previously engaged.

The examination of Mr. Latrobe, as far as it could be done without instrumental surveys, demonstrated, to the satisfaction of the committee, that the cheapest route to Wheeling, through the State of Virginia, was that which proceeded by the ravine of Fish creek to the mouth of that stream on the Ohio, and thence by the bank of the Ohio to the city of Wheeling. According to his examinations, the route by the mouth of Fish creek proved to be less expensive to construct, maintain, and work, than the route prescribed by the acts of 1844, '5 and '6, and rejected by the stockholders, by $514,195; and cheaper than the route by Grave creek, referred to in the present law, by $276,213;

thus placing it at the option of Wheeling, by waiving her right to pay the difference in the expense of the second and last routes, to permit the road to be constructed to that city by the mouth of Fish creek, only sixteen miles higher up the river than the mouth of Fishing creek, and twenty-eight miles below the city of Wheeling. Your committee deemed it their duty, and as important to the interests of the stockholders, to insist upon the option of adopting that route, and of touching the Ohio river at the mouth of Fish creek, if they desired to do so; and they finally concluded an arrangement with the committee of the city of Wheeling by which that right or option had been secured, and by which the city of Wheeling, moreover, agrees to subscribe to the stock of the company the sum of $500,000, in money or in bonds guaranteed by the State of Virginia, and also to provide the company, free of expense, a depôt in the city, with the right of way through the city limits, and the use of locomotive engines through the streets.

The arrangement thus concluded is now submitted with this report; it has been already duly ratified and confirmed by the authorities of Wheeling, and, if the law be accepted by the stockholders of this company, will be binding upon that city. The committee are of opinion that by this arrangement, and according to the present law, the company may secure all the substantial advantages they ever expected from a terminus of their road at a southern point on the Ohio, and at a cost of not greater than those advantages would fully warrant.

The committee deem it proper to add, that unless the obligation it imposes of constructing the road to Wheeling could be deemed objectionable, which, in the present posture of their affairs, and for the considerations they will hereafter advert to, they cannot admit, the present law of Virginia grants the right of way upon as favorable terms as any they have heretofore obtained, or could expect hereafter to obtain.

It does not require the company to adopt the route, or any objectionable part of it, heretofore prescribed by the act of 1844–5, and 1845–6, and rejected by the stockholders, but gives them option of at least three other and different routes, considerably cheaper, and of seeking a terminus of their road at the mouth of Fish creek, only sixteen miles higher up than the point heretofore preferred as a southern terminus on the Ohio. It releases them from all restrictions upon their tolls, in competition with the canal or other rival works; and in requiring the establishment of a depôt at the canal basin on the Shenandoah and at Cumberland, it does little more than repeat the obligations to which the company is already subjected by the laws of Maryland, and which, on the Shenandoah, it has actually complied with. It does not impose upon the company any obligation to complete all parts of its road simultaneously; on the contrary, it imposes that obligation only in respect to the portion of the road west of the Monongahela river, and allows the privilege of resting at that river, or at any point east of it, during the term prescribed by the act. The committee are free to express it as their opinion, however, that if the company accept the law, they should not contemplate the necessity of using

3000.

this privilege, but should, on the contrary, desire to press the work forward, with all possible despatch, to its terminus or termini on the Ohio river. The committee, moreover, deem it important to add, that while the law, in one of its sections, guards against an implied renewal of the contract by the State of Virginia to any part of the construction of the road from Harper's Ferry to Cumberland, it leaves the contribution of two-fifths of the cost of the extended road within the State to the operation of the general laws and policy of Virginia.

The committee have some reason to believe that this was not unintentional, and are not without much reliance upon the assurances and cordial co-operation of the interests of Wheeling, to procure from the State the usual proportion of two-fifths of the cost of the extended road from the Maryland State line to that city. The committee conclude this part of their observations by stating that the agreement now concluded obtains for the company all the advantages and concessions which the board, as explained in the address of the President to the stockholders at their meeting on the 5th of April last, contemplated to insist upon. If, then, the substantial advantages ever contemplated from the connexion of the road at a southern point on the Ohio, may be expected from the termini at the mouth of Fish creek and at Wheeling, the company could not have demanded greater privileges, in its extension and future working, than this law confers.

These advantages may be realized from the termini secured by the law and the agreement with Wheeling, the committee are equally well persuaded.

In prosecuting the road to the Ohio river, the committee have never doubted that it was not more the primary intention and object of the company than essential to the interests of the stockholders, and the trade and prosperity of this city, that it should terminate at such point south on the river as would most certainly secure the trade and travel passing up the river, and by early and favorable connexions with the western improvements, avoid the hazard of rivalry and competition with our northern cities, attract the trade and travel of the great west upon their road, and bring them to Baltimore.

In the pursuit of these objects, it would be far more advisable to complete their work, even at much greater cost, to a point at which they would reach the trade and travel free from all competition, than to expend a comparatively less sum upon a work which would annually expose them to the loss of the principal advantages of the enterprise, and oblige them to maintain a competition, upon unequal terms, with formidable rivals.

The uniform history of the company shows that its aim has been to go far enough south on the Ohio to arrest the trade and travel passing up the river; to connect certainly and advantageously with the progressive improvements in the west, and to escape from the competition with New York and Philadelphia. It would, therefore, be a departure from the uniform purpose of the company, and from the settled public opinion in this community for twenty years, if, neglecting

this obvious policy and forecast, we could be content to expend millions of our capital to attract the travel and trade from southern points, at which they could be obtained without competition, and draw them to another point farther north, at which we would be compelled to engage in a close and powerful rivalry for a small share of either. That point which would afford the greatest security for the river trade and travel, and promises the earliest and surest connexions with the western improvements, is the one to which the company should direct its attention and resources.

If not from the origin of the enterprise, as early, certainly, as 1835, the city of Wheeling had been preferred, and accordingly selected, by common consent, as the most suitable point to obtain those objects; and it is worthy of observation that this preference was adopted and avowed when the principal dependence, both for trade and travel, was upon the river navigation and the national road, with little expectation of such an extension of railroad as has been since projected through the State of Ohio.

On these grounds, Wheeling had been conclusively adopted as the terminus of the main stem of the road, even subject to the embarrassment and additional expense of making a branch to Pittsburgh, as a bonus to the State of Pennsylvania for the privilege of passing through the territory of that State to the preferred southern point.

The application of the company to the legislature of this State, and to the city council, for an increase of their subscription, to the amount of $3,000,000 each, represented Wheeling as the terminus of the main stem, and Pittsburgh as a branch only, which could be avoided; and the contributions, both on the part of the State and city, were made in the expectation that the road would be prosecuted, if practicable, in pursuance of that design. The same purpose was more emphatically declared by the company, and affirmed by the Virginia legislature, in 1838, limiting, in express terms, the terminus of the main stem at Wheeling, and until the year 1843 the company never wavered or faltered in its purpose, or had reason to doubt the feasibility of its object. In that year the law of Pennsylvania granting the use of its territory expired; and that State refusing to renew the grant upon terms which the company could accept, and under an impression that there was no approach to the river at Wheeling without passing through Pennsylvania, the company was obliged to turn their attention to a point even farther south, and accordingly applied to the legislature of Virginia for permission to select a terminus at any point not below the mouth of the Little Kenawha. The first application for this purpose failed, chiefly for want of time during a short session of the legislature; and before the commencement of the following session the engineer of Wheeling discovered a route to that city by which it was insisted that the road could be constructed without passing through the State of Pennsylvania; and that route, by a law of two successive sessions of the Virgina legislature, was prescribed as the only condition upon which the right of way through that State would be renewed. Each of these

laws was rejected by the stockholders, and it being well understood that the objections to the route they prescribed were insuperable, the recent law of that State relaxed the conditions of the previous laws, and allowed the company an enlarged option in the selection of their route. In all the recent efforts of the company, therefore, to obtain the right of terminating their road lower down the Ohio, the motive did not so much proceed from an objection to the suitableness and advantages of Wheeling as a terminus, as the route by which they were required to construct the road to that city. It is not to be denied, that when compelled, as already stated, to turn their attention to another terminus than Wheeling, the western improvements by railroad, which had been projected in the interim, formed a necessary element in the calculations of the company; and they were moreover led to believe, by the reconnoissances and reports of their engineer, that a more southern point offered even greater advantages as a terminus of the road than the point previously preferred; and it must be stated that, so far as can be inferred from those reconnoissances and reports, the mouth of Fishing creek or Parkersburg was deemed by the engineer as the point better than any other adapted to the objects of the company. It may be admitted that this preference was, in some respects, well founded, though the committee do not hesitate to express it as their opinion, that subsequent information, and a more thorough investigation of the subject, have shown that it is not entitled to the force that had been generally conceded to it.

The preference of the mouth of Fishing creek as a terminus of the main stem was justified by the saving of distance, in reference to the western trade, compared with any other point on the river from the mouth of the Little Kenawha to Pittsburgh, inclusive, except the mouth of Fish creek; by the cheapness of construction over each of the other routes, with the same exception, and by the greater facilities which it was alleged it afforded in forming connexions with the projected improvements, on both lines, on the west side of the Ohio river. It is to be here observed that, both in cost and distance east of the Ohio, the road to the mouth of Fish creek would be the same as to the mouth of Fishing creek. It was particularly urged, that from the mouth of Fishing creek connexions with the Ohio works upon the central line through Zanesville, Columbus, and Zenia, to Cincinnati, could be formed with greater advantages than from any other point; and that, with the southern line of improvements through Marietta, Athens, and Chillicothe, to Cincinnati, it was the only point, except Parkersburg, from which a connexion could probably be made. Without these advantages Fishing creek would be entitled to no preference over any other point from which they might be obtained. Upon the grounds of its superiority in these respects, real or supposed, the preference of Fishing creek has rested, and upon the same ground the stockholders, at their meeting on the 22d of February last, declared their willingness and determination to accept a law which would oblige

them to construct their road to Wheeling, if they could be allowed the privilege of constructing it to that city by the way of Fishing creek.

The committee, therefore, think that if, from better investigation and more recent information, it appears that the same, and even greater, advantages which were expected from touching the river at the mouth of Fishing creek, can be realized, from the construction of the road, at no greater cost, to Wheeling, by the mouth of Fish creek, sixteen miles higher up, the present law is equally entitled to their acceptance. It may be conceded that the distance by the mouth of Fishing creek, with reference to the trade with Cincinnatti, would be less than by other points on the river, excepting Parkersburg, north or south; and that the cost of constructing the road to that point would be less than to any other southern point, excepting to the mouth of Fish creek; but the committee apprehend that neither distance nor cost, unless they are sufficiently great to obstruct the business of the road or defeat the ability of the company to make the work, are points most deserving of consideration. If the cost be within the ability of the company, and the terminus such as to command the full amount of trade and travel, the elongation of the distance, so far from forming an objection, becomes a positive advantage, by increasing the profit upon a lengthened line of road.

Nor must it be forgotten that the object of extending the railroad to the Ohio river is not for the mere trade and travel of the point to which it may be extended; that is altogether a subordinate consideration. The object of reaching the Ohio is to get within the proximity of the trade and travel of the great west beyond that river, and the point from which these can be most certainly secured is that to which the road should be carried. The question, therefore, the committee repeat, is from what point the trade and travel of the river can be most certainly commanded, and with which the improvements west of the river could most advantageously connect.

It is to this consideration, and to the information they have acquired in relation to it, that the committee would particularly invite the attention of the board. Their investigation has developed facts and information which had not previously received sufficient attention, and has led the committee to the conclusion, not only that the cost of the construction of the road to Wheeling will be little, if any, more than to the mouth of Fishing creek, (and considerably less than to Parkersburg,) the uniformly preferred route, but that the advantages of connexion with both lines of works in Ohio will be even greater and more certain of accomplishment, from the route authorized by the agreement with the city of Wheeling, than from a terminus at the mouth of Fishing creek.

There are two great lines on which the public works through the State of Ohio intend to connect with St. Louis to the west, and north with the lake country, and projected to the Ohio river. One is called the southern line, extending through Chillicothe, Athens, and Marietta; and the other is denominated the "Great Central line," leading from

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Cincinnati through Zenia or Springfield, Columbus, and Zanesville; and a terminus at Fishing creek was originally preferred as being equally suited to a connexion with the works on both of these lines. It may be conceded that from that point a connexion could be formed both at somewhat less cost and distance with the southern line than from Wheeling or even the mouth of Fish creek; and it is equally true that from Parkersburg the connexion could be formed with even greater advantages than from Fishing creek, or any other point on the river. It is also true, however, that a connexion with the southern line could be formed at little more expense, and with scarcely less advantage, from the mouth of Fish creek than from that of Fishing creek.

Fish creek being only sixteen miles higher up the river than Fishing creek, and the elongation of a road over that distance costing not exceeding $250,000, it is not to be doubted that the cities and counties interested in the southern line would be quite ready to incur that expense in extending their works to the upper point. It may, therefore, be assumed as certain, that in procuring the option of going to the mouth of Fish creek, the company has as effectually secured an early connexion with the southern line of improvements in Ohio as they could have done from Fishing creek, and that, in this respect, the object of the stockholders, as declared at their meeting on the 22d of February last, will be fully accomplished. And it is perfectly certain that, with a point north of Wheeling, and even of Fish creek, a connexion with this line could by no possibility be formed. Any connexion with the southern line of improvements, if a northern terminus were adopted, would be lost to the road altogether.

The committee, however, consider it even more important to state, that their recent investigations have shown that, with the great central line of the Ohio improvements, from Cincinnati through Columbus and Zanesville, already in a more advanced state, and with greater means of completion, a connexion could not be advantageously made from the mouth of Fishing creek, and would be more promptly and certainly formed at Wheeling than at any other point north or south on the Ohio river. The committe, cannot doubt that this consideration must give a new and important aspect to the subject, and that it should have a controlling influence over the future decisions of the company.

On this ground, in reference to the central line of the Ohio improvements, the advantages of a terminus at Wheeling would be superior to those of Fishing creek; and combined with the right of touching at the mouth of Fish creek, the route authorized by the agreement with Wheeling would not be inferior to any other on the Ohio river.

The committee have already alluded to their conferences, while at Wheeling, with representatives attending from several parts of the State of Ohio; and they have now to add, that during their recent conference in this city, they were attended by Mr. Alfred Kelly, as the representative from the city of Columbus.

Mr. Kelly's long and eminent connexion with the construction and management of the public works of Ohio is well known in this community. No man has been longer or more usefully engaged in those

important improvements, or is more intimately acquainted with [the] topography and resources of that great State. He is at present at the head of one of the works upon the central line, passing through Columbus, and designed to form part of the great west and east line from St. Louis, and was selected by the authorities of Columbus to attend the conferences between this company and Wheeling, and to speak authoritatively of those points on the Ohio river, with which it would be consistent with the ability and interests of the Ohio improvements to connect.

A summary of Mr. Kelly's views upon those points is substantially embodied in two letters to the President, dated the 2d and 5th July instant, which the committee submit to the board with this report, and which will be found remarkably to corroborate the statements, both as to comparative routes and distances to the several points on the river, and in reference to the lake trade, presented by the President of this company in his addresss to the stockholders of the 5th of April last.

And also the resolution of the defendant of the 8th February, 1847, in the words following:

Resolution of 8th February, 1847.

At a called meeting of the stockholders of the Baltimore and Ohio Railroad Company, held this day, at which 86,469 shares were present, the within preamble and resolutions were offered by Joseph W. Patterson, esquire, and were unanimously adopted.

J. I. ATKINSON,
Secretary of the meeting.

BALTIMORE, *February* 8, 1847.

Whereas on the 19th day of February, 1845, an act passed the legislature of Virginia, entitled "An act to authorize the Baltimore and Ohio Railroad Company to complete their road through Virginia to the Ohio river, and for other purposes," which act being submitted to a meeting of the stockholders duly called to consider the same, was, on the 12th day of July, 1845, absolutely and definitively rejected by the votes of 50,632 shares against those of two shares, the said two shares being owned by a stockholder residing in the city of Wheeling. And whereas the legislature of the State of Virginia, on the 28th day of February, 1846, at the instance of persons unknown to the stockholders, passed an act supplementary to the act aforesaid, which the board of directors believing that it in no degree obviated the objections upon which the stockholders had rejected the original act, deemed it unnecessary to convene a meeting of the stockholders to consider the same. And whereas this meeting fully concur with the directors in that view, and in the opinion that the supplementary act is not less inadmissible than that previously rejected. And whereas there is reason to believe that representations have been, and continued to be, made at Richmond, for the purpose of producing *and* impression upon the minds of members of the legislature that, if that honorable body refuse a less restrictive grant than that in the aforesaid acts, the Baltimore and Ohio

Railroad Company would consent to terminate the main stem of their road at the city of Wheeling. And whereas it is only just to this company and to the honorable legislature of Virginia that the sentiments of the stockholders should be as promptly and definitively known as the circumstances of the case admit of.

Resolution.

Resolved, That the Baltimore and Ohio Railroad Company will not, under any circumstances, or for any consideration, construct their road to the city of Wheeling by the route to which they would be confined by the law passed February 19th, 1845, and its supplement passed February 28th, 1846.

I certify the foregoing to be a true copy.

J. I. ATKINSON, *Secretary.*

And also the following letters between the plaintiff and Louis McLane, President of the Baltimore and Ohio Railroad Company:

Letter from L. McLane to A. J. Marshall, 27th December, 1846.

BALTIMORE, *December* 27, 1846.

To A. J. MARSHALL, Esq.

DEAR SIR: It appears to me to be of the utmost importance that it should be, as early as practicable, understood that the Baltimore and Ohio Railroad Company will, under no circumstances, and for no consideration, consent to make their road to Wheeling according to the route prescribed by the law of the two last sessions. I am quite confident that every member of the board, and every nine out of ten men in this community, if this route be adhered to, would immediately bend their whole force to Pittsburgh. Nor will they wait so as to allow the Philadelphia road to be made in advance of ours.

I believe it to be equally clear, that after expending $3,000,000 to go to Pittsburgh, there will not be interest enough any where to raise the additional $7,000,000 to go to Parkersburg. As to Wheeling, after going to Pittsburgh, the project of making a road to the moon would be about as probable as a branch to that city. It would seem to me, therefore, that both Parkersburg and Wheeling have almost an equal interest that the company should not be driven to Pittsburgh. Some common point on the Ohio, from which, taking that river as the base, the line might hereafter be extended south or north as the respective interests might desire it. That would appear to me to be a reasonable compromise to all parties.

1. The first object, then, would be the unrestricted choice of a terminus not lower down than the Little Kenawha; and this ought at any rate to be urged to compel other interests to acquiesce in more reasonable terms.

2. If this cannot be had, then a compromise upon some middle

point, Fishing creek for example, should be united upon. In that event Wheeling should be required to make good the payment of not less than the sum she was required to advance by the law of 1838, to the road secured by that act.

If there be a disposition to do any thing, this last proposition would seem to me to be quite practicable. I should hope it would not be difficult to inspire the advocates of all other schemes, and of the internal improvement party generally, with a disposition to reconcile the northwestern members, and to get this question, which, until finally disposed of, must remain an obstacle to all other projects, out of their way. A compromise to some common point on the Ohio, with a branch to Wheeling for her million, and a similar extension to other points from which a proportionate contribution would be made, ought to reconcile all; and at any rate, the other interests in the State which have so much motive finally to put this subject at rest, might be brought to force such a compromise as should be satisfactory to all, or such at least as would be just to all.

I hope, if it shall appear that the whole we desire should not be practicable, that you will not allow the time for a compromise to pass by. No time ought to be lost in convincing the agents of Wheeling that they have men in their own ranks who, in reality, desire the road to [be] made to Pittsburgh, and who expect to succeed by preventing any modification of the present law. I learn that in some of his conversations here Mr. Knight did not conceal his individual preference for Pittsburgh; and certain it is that this could not be more effectually promoted than by preventing at this present session any modification of the existing laws.

I should be glad to hear from you at your earliest leisure.

And am, dear sir, very respectfully,

Your obedient servant,

L. McLANE.

Resolution of the committee of *of* 18th January, 1847, herein before inserted, at page 31 of this record.

Letter from L. McLane to A. J. Marshall, 6th February, 1847.

FEBRUARY 6, 1847.

DEAR SIR: I received a letter from Mr. Duncan last night, which I have answered to-day, and sent a copy of my answer to Mr. Andrew Hunter for his and your inspection. I think Mr. D.'s course ungenerous. It is calculated to realize all my fears of the Parkersburg men, and makes me apprehensive that even the making of a compromise must depend upon the votes of other interests. I can only beseech you to redouble your efforts for a compromise if the general bill fail.

I am, dear sir, respectfully,

Your obedient servant,

LOUIS McLANE.

A. J. MARSHALL, Esq.

Same to same, 6th February, 1847.

FEBRUARY 6, 1847.

DEAR SIR: I received to-night your letter of yesterday. There can be no objection to make Three Fork a point in our route, either with an unrestricted choice to Parkersburg, or by requiring us to touch at Three Fork, and confining us to Fishing creek, with the unrestricted choice to Parkersburg, although Three Fork would somewhat elongate the distance to Parkersburg, and make it rather more expensive; neither would prove a very serious obstacle. So that even Parkersburg might be well content with either alternative. If Three Fork be made a point, with the unrestricted choice to Parkersburg, those interested in the route to that point would stand about as well as ever; and if Three Fork be made a point, confining us to Fishing creek for the present, so much being now gained, there would be almost a certainty that before we actually reached Three Fork, those having achieved so much would be able to enlarge the choice. Therefore I leave you to press those considerations, with which I should hope you could keep both Stephenson and Bennet from flying the track. I can scarcely sufficiently impress you with the intense solicitude felt in this community upon this subject; and I refer to it only to justify me in asking, in this crisis of our affairs, to keep me frequently informed of your progress.

I would also remind you of the importance of keeping our prominent speakers and advocates actively engaged in this "war of substitutes and amendments," of which you speak. Talking, in the Virginia legislature, is half the battle, and lends the moral weight which such advocates as we are so fortunate as to have on our side; their power and influence must be greatly needed to prevent the confusion and loss to which such a scene is too apt to lead.

I am, dear sir, very respectfully, yours,

LOUIS McLANE.

Letter from L. McLane to A. J. Marshall, 11th February, 1847, B, herein before inserted, at page 34 of this record.

Letter from L. McLane to A. J. Marshall. A. 11th Feb., 1847.

BALTIMORE, *February* 11, 1847.

To A. J. MARSHALL, Esq.

DEAR SIR: Your letter of the 9th reached me at too late an hour last night to afford me an opportunity of consulting the committee, and without that opportunity I could not give the reply I wished.

It would be difficult for me to be more explicit than I have been in regard to Fish creek; and I am sorry that you, or any one else, should require more than the resolution unanimously adopted by the stockholders. That resolution is not confined, as you seem to suppose, to the law. It, on the contrary, does, and was intended most explicitly

to reject in toto the route prescribed in the present law; and as Fish creek could only be approached by that route, or some part of it, as certified by Mr. L.'s letter, forwarded to Mr. Hunter, that point is effectually and necessarily excluded.

I am still free to assure you that, in the opinion of the committee, the stockholders will not, under any circumstances, construct their road to Wheeling without the privilege of a terminus at some point on the Ohio river not higher up than Fishing creek; and it is absolutely certain that the compromise proposed by Mr. Sheffy will, under no circumstances, or for any inducement whatever, be assented to. To this effect I wrote to-day to Mr. Hunter.

At the same time that I am free to give you these assurances, the committee, after full reflection, are unwilling to assume the responsibility of preventing, by their act, the passage of a law, if nothing better can be had, tendering to the stockholders the option of rejecting or accepting it, which would confine their main stem to Fish creek, by such route as the company might select. While the committee are persuaded that such a law would not be accepted by the stockholders, that there are a large number of them who believe that if such a law should now be tendered to them, they would be thereby introduced into the State, and could hold it under consideration, if for nothing more, for the chance of getting it amended at another session; and we could not, therefore, be responsible for depriving them of that option. In this crisis, if, after the utmost exertions, nothing better can be done, if it were practicable to pass Mr. Hunter's substitute with Fish creek, instead of Fishing creek, we could not undertake to prevent the passage of such a law. We would then refer the whole question to the stockholders; and I am authorized to say that, every thing else failing, if such a law as I have indicated pass, and the stockholders accept it, and act under it in the manner contemplated by the contract, your compensation shall apply to that as to any other aspect of the case. The committee do this from the sense they entertain of the labors and exertions you have already made, and believing that the fruit of these and your further exertions, if in a form to be acceptable to the stockholders, should also enure to your benefit. They do not suppose this was needed to ensure your continued exertions in the present crisis.

It ought to be clearly understood, however, that Sheffy's compromise can, in no event, be brought within this view, and, as regards that, the committee are willing to be responsible for preventing even its tender to the stockholders. That, or any thing like it, is wholly impracticable. It is worse even than the present law. It would involve the employment of Knight's route under even greater disadvantages, and would be promptly and forever rejected.

I am, dear sir, very respectfully, your obedient servant,

LOUIS McLANE.

Louis McLane to J. A. Marshall, 26th February, 1847.

FEBRUARY 26TH, 1847.

DEAR SIR: It would be useless to trouble you with the sensation produced by the intelligence from Richmond last night. Men cling to hope to the last, and therefore many of our friends do not despair that your plan of operations may yet ripen in fruit of which we may taste. For myself, however, although I think your plan most judicious in all respects, and trust it may be vigorously carried out, I no longer rely upon calculations. The James river is our great enemy; Wheeling is but a mole weight, and I fear that the interest of the latter, combined with the former, may carry this measure in despite of your opposition. Edgington's amendment is utterly impracticable, as the resolutions of the stockholders' meeting sufficiently show. What may be made out of [it] I cannot foresee, and must wait events.

The movement by Robinson, of Pittsburgh, is a bold one, certainly; and, if all our accounts do not deceive us, will turn out to be a cheat. It will produce a deep sense of indignation in this community, and I refrain from attempting to predict the consequence. It will on their friends, and most probably a subscription of a single dollar.

But in truth there are so many causes of indignation, that one can scarcely say which is to become predominant. The conduct of the Parkersburg men exerts its full share; and the consistent opposition of Wheeling appears to give her a merit, or less demerit than is attributed to others just now showing the cloven foot. However, pursue your plans with vigor. Keep Hunter with you, and get us the best law you can, if only to be rejected for another effort. Your only chance is the James river interest. The recent vote shows that most conclusively.

Yours, respectfully, L. McLANE.

A. J. MARSHALL, Esq.

Letter from L. McLane to A. J. Marshall, 1st March, 1847.

MARCH 1ST, 1847.

DEAR SIR: As I fear it may now be treated as too certain that we will get no bill at the present session that we could accept, I hope it would be agreeable to you to look forward to renewed and even more vigorous and extended efforts at another session; with this view it would be very important to look immediately to the election of proper delegates from counties in which it would be possible to exert an influence. Mr. Hunter ought to be prevailed [upon] to accept a re-election, and measures should be taken to give him another colleague. I only hint generally at this topic, leaving to you the arrangement of details.

I propose to go myself to Ohio in the course of the season, and endeavor to procure applications to be made from that State to your legislature to permit the use of the territory for a communication between the West and the Atlantic, and, if possible, to procure a similar appli-

cation from Maryland, and from the Post Office Department for the accommodation of the mail. All these measures, however, may be allowed ample time to mature; that relating to the election of delegates in Virginia only being urgent, which is my chief reason for now writing. I hope, nevertheless, you will continue your exertions to get a bill through now that we may accept. I trust, on the whole, that my own action, and that of our friends, would be more free to leave the case open, and abstain from any on my part to advise or recommend any particular law. It would leave me free to advocate, in the end, a law that I could not now venture to advise, and enable our friends to get the best in their power. You must, therefore, get the best you can, which, although we might reject it, would form the basis of a negotiation with Wheeling for something better.

Yours, most respectfully,

LOUIS McLANE.

A. J. MARSHALL, Esq.

And also the deposition of Louis McLane, in the following words:

Deposition of L. McLane.

The deposition of Louis McLane, taken by consent, to be read, in case of his absence, at the trial of the case of Alexander J. Marshall against the Baltimore and Ohio Railroad Company, in the circuit court of the United States, in and for the fourth circuit and district of Maryland, taken on the 18th day of November, 1851, in presence of the counsel of the respective parties.

Deponent states that he was President of the Baltimore and Ohio Railroad Company from 1837 to the month of October, 1848, when he resigned said office.

The said company were desirous to obtain the right of way through Virginia, and efforts were made, from time to time, as early as in the year 1843; a memorial was presented that year to the legislature of Virginia, and Charles J. Faulkner, esq., of Virginia, was employed to attend at Richmond during the session of 1843, and did so attend. Deponent cannot, at this moment, recollect whether he was at Richmond during that session, but he was there next year he is sure, and argued the question before a committee. Mr. Faulkner was also there during the whole session.

The city of Wheeling was represented by a committee, and the controversy was an animated and very decided one, and so continued up to the passage of the law of 6th March, 1847. In consequence of the opposition of Wheeling, and from the fact that the committee of Wheeling was a numerous one, and had opportunities of communicating more readily with the members of the Virginia legislature, and so to exercise more influence than the company could, it became a matter of some consideration, with members of the board, whether some more efficient representation of the company at Richmond should not be secured. This was in the recess between the session of 1845 '6, and of 1846–7.

Andrew Hunter, esq., of Virginia, was a member of the legislature of Virginia, and deponent had several conversations with him as to the propriety of a more efficient representation at Richmond, and deponent understood him to concur in the propriety and expediency thereof. If he had not been a member of the legislature, deponent would have been disposed to secure his services.

Witness, as President of the company, received a letter from Mr. Marshall, the plaintiff, proposing to undertake the agency for the company at Richmond. Deponent had no acquaintance at the time with Mr. Marshall, and does not remember that he had previously heard any thing in relation to him or to his character, but made inquiries which resulted in satisfying him that Mr. Marshall was a member of an influential family, and was a man of character, influence, and standing.

Deponent brought before the board the subject of having a more efficient agency at Richmond on the part of the company, and to have one as efficient as that of Wheeling, and intimated that the agency would be attended with more expense than any agency which *which* they had before had at Richmond, and he requested that a committee should be appointed, with ample power to do whatever they might think necessary and proper. Witness is under the impression that he did not go into details in his communication to the board, because he thought it was not a matter to be talked about, inasmuch as he thought it would be better to have the matter referred to a committee upon whom any members of the board might call, at any time, for information. He did not mean to keep any thing from the board; and in fact many of them did call upon the members of the committee and acquired full information of what was done. At that time no contract had been made, and the object of raising the committee was in fact to negotiate the contract and make it. The board authorized the appointment of a committee for the purposes indicated; and the committee was appointed, consisting of James Harwood, Samuel Hoffman, William Cooke, and Columbus O'Donnell. Deponent was also, ex officio, of the committee.

The committee acted on the proposition of Mr. Marshall. There was a book kept for the purpose in which all the proceedings were entered, and were signed by the committee. Deponent acted by their authority, in all his communications with Mr. Marshall, in relation to his agency. He thinks that he wrote no letter not previously sanctioned by the committee; if he did write any letter, not sanctioned by the committee, it was a mere private affair. Mr. J. I. Atkinson acted as secretary to the committee and recorded the proceedings. The book was kept in his (Mr. McLane's) drawer, and he does not remember whether any member of the board did, or did not, desire to see it; but he knows that many of the members were aware of its general purport, and it would have been shown to any one who might have desired to see it.

The committee entered into an agreement, dated 12th December, 1846.

The question being propounded by the plaintiff, whether there was any private understanding or agreement with Mr. Marshall, at the time said contract was entered into, or before or afterwards, that any improper means or acts were to be employed, performed, or resorted to by him in the prosecution of his agency?

He answers and says: No.

(This question was objected to, by the counsel of defendant, as a leading question, and the answer was given subject to exception.)

The question being propounded—what measures was it contemplated by the committee that Mr. Marshall should or would use in the performance of his agency? Explain, if you please, the views of yourself and of the members of the committee, as far as the latter were made known to you, as to the measures Mr. Marshall should or would pursue.

(The question is objected to, and the answer is taken subject to exception.)

The witness says, it is very difficult to enumerate all the measures which, in his opinion or in that of the committee, it would be proper for Mr. Marshall to use. He was expected to further the application of the company for the right of way, and to enlighten the public mind as to its real importance to the company and to the State of Virginia; to remove existing prejudices against the company, and furnish such information as would counteract the representations of the Wheeling committee. But having restricted him in the agreement to the use of only proper measures, they could not foresee all that might be proper, and necessarily left it to his own discretion.

Deponent proceeds to state that the contract was made with Mr. Marshall originally, and all changes or modifications therein were made by the authority of the committee, and are in writing. All letters from deponent to Mr. Marshall, purporting to change or modify the contract, were written by authority of the committee. He wrote no letter to Mr. Marshall, purporting to change or modify the contract, but by the authority of the committee. There may have some letters passed from him to Mr. Marshall upon collateral points, during his agency, upon which he did not deem it important to consult the committee.

And further deponent saith not.

LOUIS McLANE.

BALTIMORE CITY, *Maryland.*

This day personally appeared before the subscriber, a justice of the peace in and for the city aforesaid, Louis McLane, deponent in the above deposition named, and made oath, in due form of law, that the matters and things therein stated are true.

Witness my hand, this 18th day of November, 1851.

CHAS. A. LELOUP, *J. P.*

Evidence of Joseph Segar.

And also plaintiff produced Joseph Segar, a witness, who gave evidence tending to prove that the plaintiff did attend at the legislature

of Virginia during the session at which the law of 6th March, 1847, was passed, as agent of the defendant, and was diligently exerting himself to procure the passage of a law satisfactory to defendant by reasoning with the members of the legislature, exposing misrepresentations, affording explanations necessary to a due understanding of the public importance of the contemplated improvement, which was done as well by verbal communications as by various publications in various parts of the State, intended to produce an effect at Richmond.

Some eight or ten gentlemen were associated with the plaintiff, all men of high character and respectability; and the law of 6th March, 1847, was the best which could have been obtained at that session of the legislature.

Evidence of And'w Hunter.

And the plaintiff further gave evidence of Andrew Hunter, tending to prove that said Hunter was a member of the legislature of Virginia for the session of 1846–1847; and that the plaintiff attended the same, and was active and diligent in advancing the proceedings to obtain the right of way for the defendant, during the whole session; and that after the 11th February, 1847, no better law than the act of 6th March, 1847, could have been obtained.

Cross examination.

And, on cross examination, the said witness gave evidence tending to prove that the bill first introduced into the house of delegates was for the creation of a new company, to construct a road from the eastern side of the Alleghanies to Parkersburg, which was defeated. Then Mr. Sheffey offered his bill, for which the witness submitted a substitute, known as Hunter's substitute, which was finally amended by Edington's amendment, (which was substantially the first section of the act passed,) and then passed and sent to the senate, where, his impression was, it was not amended.

That he was not consulted by Mr. McLane, as stated by him, prior to the meeting of the legislature, relative to the employment of plaintiff. That the witness was apprized of plaintiff's agency before the passage of the bill, but how or when he first learned it he could not recollect; that he inferred it some time before he was positively informed of it; that he was satisfied he knew nothing of the terms of the contract with the defendant until after the passage of the bill; and he thought he first learned them in a conversation with plaintiff on the subject of securing Fish creek as a terminus, but that he was informed in general terms of plaintiff's agency before the passage of the bill, as well by plaintiff as by the authorities of the company.

That while the conduct of some persons opposing the defendant's application was outrageous, the conduct of the plaintiff and his associates was marked by the most scrupulous delicacy. That plaintiff strove to prevent the insertion of Edgington's amendment in Hunter's substitute, and continued his exertions, to the passage of the bill, to protect it from burdensome amendments; but the main contest was considered over after the passage of Edgington's amendment.

And here the plaintiff rested his case.

And the defendants, to support the issue on their side, offered to read the letter of the plaintiff to Mr. McLane, of the 17th Nov., 1846, with the enclosed document, (No. 1,) both of which were admitted to be in the handwriting of the plaintiff, and the letters of Mr. McLane to the plaintiff, of the 25th November and 12th of December, 1846, admitted to be in his handwriting, for the purpose of showing, together with the other circumstances in the case, the contract to be void, as against public policy; which several papers are in the following words:

Letter from A. J. Marshall to L. McLane, 17th Nov., 1846.

WARRENTON, *Novem.* 17.

DEAR SIR: In an interview with you a few days since, I promised to submit in writing a plan, by which I thought your much desired "right of way" through this State might be procured from our legislature. I herewith enclose my views on that subject, and shall respectfully await your reply.

In offering myself as the agent of your company to manage so delicate and important a trust, I am aware I lack that commanding reputation which of itself would point me out as best qualified for such a post. Of my qualification and fitness it is not for me to speak; and, in consequence of the absolute secresy demanded, I cannot seek testimonials of my capacity, lest I should excite inquiry. If your judgment approves my scheme, it is probable you might get satisfactory information respecting me by a cautious conversation with John M. Gordon, A. B. Gordon, Dr. Jno. H. Thomas, or Joseph C. Wilson, all of your city. Without impropriety, I may say for myself I have had considerable experience as a lobby member before the legislature of Virginia. For several winters past, I have been before that body with difficult and important measures affecting the improvement of this region of country; and I think I understand the character and component material of that honorable body.

I shall have to spend six or eight weeks in Richmond, next winter, to procure important amendments to the charter of the Rappahannock Company. This will furnish reason for my presence in Richmond.

There is an effort in progress to divide our county, to which we of Warrenton are violently hostile. This furnishes another reason for myself, and also for one or two other agents, to remain in the city of Richmond during the winter.

Col. Walden and myself are interested in large bodies of land in Western Virginia, near which the track of your railroad will pass. This is an ostensible reason for our active interference. I live in a range of country whose representation ought to be entirely disinterested on this question of the "right of way." Notwithstanding which, I believe a plurality of our representatives have heretofore been in opposition. I know the influences that effected this, and am happy to say they will not exist next winter.

Edmund Broaddus, for many years a representative from Culpepper, a shrewd, intelligent man, influenced this result. Broaddus was

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a sort of protégé of the Richmond and James river whigs; was distinguished and promoted by them, and habitually acted with them. His place is now filled by Slaughter, a personal friend of mine. I should have little fear to carry this section of the State.

The proposed plan best speaks for itself; if you think it feasible, there is no time to be lost. I hope to hear from you at your earliest leisure. With entire respect, I am your humble servant, &c.,

A. J. MARSHALL.

I tax you with the postage, as I do not wish to be known as in correspondence.

Document accompanying the foregoing letter.

In explanation of the plan I wish to submit, it is necessary to indulge some latitude of remark on the causes which have heretofore thwarted the just pretensions of your company.

Richmond city, the Petersburg, Richmond, and Potomac railroad, the James river canal, and the Wheeling interests, acting in concert, have heretofore successfully combatted "the right of way." These interests fall far short of a majority in the two branches of the Virginia legislature. There is no sufficient ground, in the numeric force of this antagonist interest, to discourage the hope of an eventual success. On an examination of their arguments, based either upon justice or expediency, I find nothing to challenge a conviction of right, or an assurance of high State policy. On the contrary, standing heretofore as a disinterested spectator of the struggle, I have condemned the emptiness and arrogance of their pretensions, and felt indignant at the success of their narrow, selfish, and bigoted policy.

I have observed no superiority of talent, no greater zeal, or power of advocacy in the opposition, than in favor of the "right of way." The success of a cause before our legislature having neither justice, greater expediency, stronger advocacy, or greater numeric strength, is matter of just amazement to the defeated party. The elements of this success should be a subject of curious and deeply anxious investigation; for when the cause is known, a remedy or counteracting influence may be readily applied. I have no idea that any dishonorable measures or appliances (further than log-rolling may be one) have been used to defeat the "right of way." As to log-rolling, I am sorry to say it has grown into a system in our legislature. Members openly avow and act on it, and never conceal their bargain, except where publicity would jeopard success. No delegation are more skilful or less scrupulous at this game than our western right of way men; so, in that regard, there is a stand off. It seems to me the great secret of this success is the propinquity, the presence on the ground, of your opponents. The legislature sits in their midst. They exercise a vigilant, pressing, present out of door influence upon the members. If the capitol were located at Weston or Clarksburg, who would question success. The Richmond interest is ever present and ever press-

ing; her associates of the railroad and canal are at hand, and equally active. You have no counteracting influence, and hence the success and triumph of your opponents. If I am right in these views, your claims, resting alone on justice, sectional necessity, or even high State policy, will be urged in vain, and must become as mere sounding clamor in the hall, unless you meet your opponents with the weapons they use so successfully against yourselves. Experience shows that something beyond what you have heretofore done is necessary to success; and in this necessity the plan I have to submit has its origin.

The mass of the members in our legislature are a thoughtless, careless, light-hearted body of men, who come there for the "per diem," and to spend the "per diem." For a brief space they feel the importance and responsibility of their position. They soon, however, engage in idle pleasures, and on all questions disconnected with their immediate constituents they become as wax, to be moulded by the most pressing influences. You need the vote of this careless mass, and if you adopt efficient means you can obtain it. I never saw a class of men more eminently kind and social in their intercourse. Through these qualities they may be approached and influenced to do any thing not positively wrong, or which will not affect prejudicially their immediate constituency. On this question of the "right of way," a decided majority of the members can vote either way without fear of their constituents. On this question, therefore, I consider the most active influences will ever be the most successful.

Before you can succeed, in my judgment, you must reinforce the "right of way" members of the house with an active, interested, well organized influence about the house. You must inspire your agents with an earnest, nay an anxious, wish for success. The rich reward of their labors must depend on success. Give them nothing if they fail—endow them richly if they succeed. This is, in brief space, the outline of my plans. Reason and justice are with you; an enlarged expediency favors your claim. You have able advocates, and the best of the argument; yet, with all these advantages, you have been defeated. I think I have pointed out the cause. Your opponents better understand the nature of the tribunal before which this vast interest is brought. They act on individuals of the body out of doors and in their chambers. Your adversaries are on the spot, and hover around the careless arbiters of the question in vigilant and efficient activity. The contest, as now waged, is most unequal. My plan would aim to place the "right of way" members on an equality with their adversaries, by sending down a corps of agents, stimulated to an active partisanship by the strong lure of a high profit.

In considering the details of the plan, I would suggest that all practicable secresy is desirable. It strikes me the company should have or know but one agent in the matter, and let that agent select the sub-agents from such quarters and classes, and in such numbers, as his discreet observation may dictate.

I contemplate the use of no improper means or appliances in the at-

tainment of your purpose. My scheme is to surround the legislature with respectable and influential agents, whose persuasive arguments may influence the members to do you a naked act of justice. This is all. I require secresy from motives of policy alone, because an open agency would furnish ground of suspicion and unmerited invective, and might weaken the impression we seek to make.

In regard to the cost of all this, it must necessarily be great. The sub-agency must be extensive, and of first influence and character. All your agents must be inspired by an active zeal and a determined purpose of success. This can only be accomplished for you by offers of high contingent compensation.

I will illustrate this point by a single example. Were I to become your agent on my plan I should like to have the services of Major Charles Hunton, of this county. Hunton, for many years, was a member of our State senate. His last year of service was as president of that body. He is an unpretending man, of good understanding and excellent address. He is a great favorite with his own party, (democratic,) and universally esteemed as a gentleman of highest character. He is in moderate circumstances, with a large family. I have no doubt if I would bear his expenses, and secure him a contingent of $1,000, he would spend the winter in Richmond, and do good service; but if I could offer him $2,000 it would become an object of great solicitude. It would pay all his debts and smoothe the path of an advancing old age. Two thousand dollars would stimulate his utmost energies. If I am enabled to offer such inducements, I should have great confidence of success. Under this plan you pay nothing unless a law be passed which your company will accept. Of what value would such a law be to you? Measure this value, and let your own interests, in view of the high stake you play for, fix the price. There is no use in sending a boy on a man's errand; a low offer, and that contingent, is bad judgment; high service can't be had at a low bid.

I have surveyed the difficulties of this undertaking, and think they may be surmounted. The cash outlay for my own expenses and those of the sub-agents would be heavy. I know the effective service of such agents as I would employ cannot be had except on a heavy contingent. Taking all things into view, I should not like to undertake the business on such terms unless provided with a contingent fund of at least $50,000, secured to my order on the passage of a law, and its acceptance by your company.

If the foregoing views are deemed worthy of consideration, I hold myself in readiness to meet any call in that behalf that may be made upon me. Respectfully, &c.,

A. J. MARSHALL.

Letter from L. McLane to A. J. Marshall, 25th November, 1846.

BALTIMORE, *November* 25, 1846.

DEAR SIR: I duly received your letter, and its enclosure, of the 17th instant, and would have acknowledged it earlier but that I waited in

the hope of being more definite in my reply. The subject, however, is one, *however*, in which it is not easy to act promptly. I would be quite unwilling to act definitely, either to accept, or modify, or reject your proposition upon my individual responsibility; and the necessity of consultation with those whom I must, in some shape or other, consult, requires both caution and time. For the present, therefore, I propose only to acknowledge the receipt of your communication, and assure you that I will [not] unnecessarily lose time in obtaining a decision upon the subject to which it relates. It is possible, too, that I may find it necessary to ask you to repeat your visit to Baltimore.

Meantime, I remain, dear sir, respectfully,

Your most obedient servant,

LOUIS McLANE.

Letter from L. McLane to A. J. Marshall, 12th December, 1846.

BALTIMORE, *December 12th*, 1846.

DEAR SIR: I am happy to inform you that I am now prepared to close an arrangement with you upon the basis of your communication of the 17th November; but as it will be necessary to make some personal explanations, and to acquaint you more fully than I could do by letter with our views, I must ask you to visit Baltimore as early as may be practicable.

I am, dear sir, very respectfully,

Your obedient servant,

LOUIS McLANE.

A. J. MARSHALL.

And to the reading of the said enclosed document, (No. 1,) whether with or without the letters offered with it, the plaintiff objected; but the court allowed the same, with the accompanying letters, to [be read to] the jury, and it was accordingly so read with said letters; to which ruling of the court the plaintiff excepts, and tenders this, his bill of exceptions, and prays that the same may be signed and sealed, which is accordingly done, this day of November, 1852.

R. B. TANEY. [SEAL.]

Plaintiff's 2d exception.

And the defendant further read to the jury (in addition to the evidence in the former bill of exceptions, which is agreed to be taken as incorporated in this) the plaintiff's letter to Mr. McLane, of the 11th (8th) March, 1847, which is as follows:

A. J. Marshall's letter to L. McLane, 8th March, 1847.

MONDAY NIGHT, *March* 8, 1847.

DEAR SIR: In the same envelope you will find some reflections and statements of rather a desultory nature, elicited by your letter of March

1st. I am, it is true, of a sanguine temper; but I feel great confidence in the success of a second effort made on the scale I propose. Mr. Hunter will call on you in a few days, and you can better judge of prospects when you have conversed frankly with him.

I think it would be policy on your part to allow me to draw on you in favor of three of my agents for $600, whether you accept or reject my proposition. I gave Segar $100, but this does not pay his expenses. He, French, and Parker embarked in the enterprise, thinking they would be detained a fortnight, and they have been kept more than two months. Segar has been very efficient; he wrote the dialogues (except one) which you may have noticed in the Enquirer. He is now actively engaged in corresponding with the western papers, urging on those people to send Duncan, Stephenson, Willie, and others back here. We are also in danger of losing warm friends in other parts of the Commonwealth. We are planning and fixing to meet all contingencies. It is very important to secure by liberality of treatment such men as these. Segar has staid here at great sacrifice; and if you approve my suggestion, I would divide the money, giving Segar $300, the other two $150 each. You can send the money to this address: Joseph Segar, Hampton, Elizabeth city; Wm. H. French, Princeton, Mercer county; Jno. A. Parker, Tappahannock, Essex co.; all Virginia. It would probably be better to send the money to me, and let me distribute it, as it is desirable to keep your company out of view in such matters. French lives in a part of the State where he can do us much good.

I shall remain in Richmond until Friday. If you accede to this suggestion, a letter mailed Wednesday night will reach me in time; otherwise your reply should be directed to Warrenton. I do not, of course, expect a reply to the enclosed "suggestions," except in your own time.

If our relations are to end here, allow me to express my regret that my exertions have effected so little good, and to assure you that I leave your service with sentiments of the highest personal respect and kindness.

I am, dear sir, your obed't serv't, &c.

A. J. MARSHALL.

P. S. On reflection, I shall not leave Richmond until Saturday morning. I have business in Petersburg Thursday night.

And the letter of McLane to plaintiff of the 11th March, 1847, which is as follows:

Letter from L. McLane to A. J. Marshall, 11th Mar., 1847.

BALTIMORE, *March* 11, 1847.

DEAR SIR: I duly received your letter of the 8th instant, but could not obtain the final decision of our committee until to-day. I have now the pleasure to enclose it, and with it the sum of six hundred dol-

lars, which you will distribute according to your suggestion. The other suggestions in your letter and the sketch accompanying it require more consideration; and for the present I am unable to give you definite reply to them. The committee are entirely sensible of the fidelity of your exertions, and only lament that they could not have procured more satisfactory results. For myself, I can say that our relations have impressed me with a sincere respect for your character; and whether they are to be resumed or not in the future, I tender you my best wishes for your welfare.

I am, dear sir, most respectfully, your obedient serv't,

LOUIS McLANE.

A. J. MARSHALL, Esq.

And the resolution of the committee, which is as follows:

Resolution of the committee.

Extracts from the minutes of the committee to obtain a charter, &c.

On motion, it was resolved that, in conformity with the request contained in Mr. M.'s letter, the President be authorized to remit to him the sum of six hundred dollars, to be distributed according to his suggestion, it being understood that this voluntary payment is not to warrant any further contribution for past services, or to imply any consent upon the part of the company to any future contract or engagement for services hereafter.

March 11, 1847.

I certify the foregoing to be a true copy.

J. I. ATKINSON, *Secretary.*

And the receipt thereon endorsed, which is as follows:

Receipts.

Received, of A. J. Marshall, three hundred dollars, in pursuance of the design of the within advance.

JOS. SEGAR.

Rec'd the six hundred dollars refer'd to within, of which I paid $300 to Joseph Segar, as per his receipt.

A. J. MARSHALL.

Also the bill known as Hunter's substitute, which is the same inserted in the former bill of exceptions, and the agreement between the defendant and Wheeling, which is the same inserted in the former bill of exceptions; also the minute book of the committee of correspondence, which is as follows:

Minute book.

OFFICE OF THE BALTIMORE AND OHIO RAILROAD COMPANY,
December 12, 1846.

At a meeting of the committee of correspondence, appointed to take charge of the general subject in regard to measures for obtaining

the right of way through the States of Virginia and Pennsylvania, there were present Messrs. Harwood, Cooke, Hoffman, and O'Donnell. The President also attended.

On motion, it was resolved, that the President be, and he is hereby, authorized, in addition to the agent heretofore employed by the committee for the same purpose, to employ and make arrangements with other responsible persons to attend at Richmond during the present session of the legislature, in order to superintend and further any application or other proceeding to obtain the right of way through the State of Virginia on behalf of this company, and to take all proper measures for that purpose; that he also be authorized to agree with such agent or agents, in case a law shall be obtained from the said legislature, during its present session, authorizing the company to extend their road through that State to a point on the Ohio river as low down the river as Fishing creek, and the stockholders of this company shall afterwards accept such law as may be obtained, and determine to act under it, or in case a law shall be passed authorizing the construction of a railroad from any point on the Ohio river above the mouth of the Little Kenawha, and below the city of Wheeling, with authority to intersect with the present Baltimore and Ohio railroad, and the stockholders of the Baltimore and Ohio Railroad Company shall determine to accept and adopt said law, or shall become the proprietors thereof, and prosecute their road according to its provisions, then, in either of the said cases, the President shall be, and is, authorized to pay to the agent or agents whom he may employ in pursuance of this resolution, the sum of fifty thousand dollars in the six per cent. bonds of this company at their par value, and to be made payable at any time within the period of five years.

Resolved, That it shall be expressly stipulated in the agreement with the said agent or agents employed pursuant to this resolution, and as a condition thereof, that if no such law as aforesaid shall pass, or if any law that may be passed shall not be accepted or adopted, or used by the stockholders, the said agent or agents shall not be entitled to receive any compensation whatever for the service they may render in the premises, or for any expense they may incur in obtaining such law, or otherwise.

JAMES HARWOOD,
WILLIAM COOKE,
SAMUEL HOFFMAN,
COLUMBUS O'DONNELL.
LOUIS McLANE,
President.

The committee of correspondence, in regard to procuring the right of way through Virginia, met this 18th day of January, 1847, at the house of Judge Harwood, the chairman. Present—Mr. Harwood, Mr. Cooke, and Mr. O'Donnell; the President also attended.

A letter from A. J. Marshall, the company's agent at Richmond, dated the 16th instant, was submitted to the committee.

On motion, it was unanimously resolved, that the right of Mr. Marshall to the compensation, under the existing contract, shall attach upon the passage of a law, at the present session of the legislature, giving the right of way to Parkersburg, or to Fishing creek, either to the Baltimore and Ohio Railroad Company, or to an independent company, provided this company accept the one, and adopt and act under the other, as contemplated by the contract.

JAMES HARWOOD,
WILLIAM COOKE,
COLUMBUS O'DONNELL,
LOUIS McLANE.

January 19th, 1847. Mr. Hoffman not having been present at the meeting yesterday, but coming to the railroad office to-day, and having read the foregoing minute, approved the same.

SAM. HOFFMAN.

BALTIMORE, *February 11th*, 1847.

To A. J. MARSHALL, Esq., &c., &c., &c.

DEAR SIR: Your letter of the 9th reached me at too late an hour last night to afford me an opportunity of consulting the committee; and, without that opportunity, I could not give the reply I wished.

It would be difficult for me to be more explicit than I have been in regard to Fish creek; and I am sorry that you, or any one else, should require more than the resolution unanimously adopted by the stockholders. That resolution is not confined, as you seem to suppose, to the law. It, on the contrary, does, and was intended, most explicitly to reject, in toto, the route prescribed in the present law; and, as Fish creek could only be approached by that route, or some part of it, as certified in Mr. L.'s letter forwarded to Mr. Hunter, that point is effectually and necessarily excluded.

I am still free to assure you that, in the opinion of the committee, the stockholders will not, under any circumstances, construct their road to Wheeling without the privilege of a terminus at some point on the Ohio river not higher up than Fishing creek; and it is absolutely certain that the compromise proposed by Mr. Sheffy will, under no circumstances, or for any inducement whatever, be assented to. To this effect I wrote to-day to Mr. Hunter.

At the same time that I am free to give you these assurances, the committee, after full reflection, are unwilling to assume the responsibility of preventing, by their act, the passage of a law, if nothing better can be had, tendering to the stockholders the option of rejecting or accepting it, which would confine their main stem to Fish creek by such route as the company might select.

While the committee are persuaded that such a law would not be accepted by the stockholders, they know that there are a large number

of them who believe that if such a law should now be tendered to them, they would thereby be introduced into the State, and could hold it under consideration, if for nothing more, for the chance of getting it amended at another session; and we could not, therefore, be responsible for depriving them of that option. In this crisis, if, after the utmost exertion, nothing better can be done, if it were practicable to pass Mr. Hunter's substitute, with Fish creek instead of Fishing creek, we would not undertake to prevent the passage of such a law. We would then refer the whole question to the stockholders; and I am authorized to say that, every thing else failing, if such a law as is indicated pass, and the stockholders adopt it, and act under it, in the manner contemplated by the contract, your compensation shall apply to that as to any other aspect of the case. The committee do this from the sense they entertain of the labor and exertions you have already made, and believing that the fruit of these and your further exertions, if in a form to be acceptable to the stockholders, should also enure to your benefit. They do not suppose this was needed to ensure your continued exertions in the present crisis. It ought to be clearly understood, however, that Sheffy's compromise can in no event be brought within this view; and as it regards that, the committee are willing to be responsible from preventing even its tender to the stockholders. That, or any thing like it, is wholly impracticable. It is worse even than the present law; it would involve the employment of Knight's route, under even greater disadvantages, and would be promptly and forever rejected.

I am, dear sir, very respectfully,
Your obedient servant,
(Signed) LOUIS McLANE.

February 11th, 1847.

The committee met this day in the President's office; present, Messrs. Harwood, Hoffman, Cooke, and O'Donnell. The President also attended.

A letter from Mr. A. J. Marshall, dated the 9th instant, asking for the company's ultimatum, was submitted by the President.

The same being considered, the President prepared an answer, embodying the views of the committee, and which, being read, was unanimously approved and adopted, and the President was ordered to send the same to Mr. Marshall.

The foregoing is the letter referred to.

JAMES HARWOOD,
WILLIAM COOKE,
SAMUEL HOFFMAN,
COLUMBUS O'DONNELL.

March 11th, 1847.

The committee met at the President's room this day; present, Messrs. Harwood, Hoffman, Cooke, and O'Donnell. The President also attended.

A letter from Mr. A. J. Marshall, addressed to the President, dated Richmond, March 8, was submitted and read.

On motion, it was

Resolved, That, in conformity with the request contained in Mr. Marshall's letter, the President be authorized to remit to him the sum of six hundred dollars, to be distributed according to his suggestion, it being understood that this voluntary payment is not to warrant any further contribution for past services, or to imply any consent upon the part of the company to any future contract or engagement for services hereafter.

JAMES HARWOOD,
COLUMBUS O'DONNELL,
WILLIAM COOKE,
SAM'L HOFFMAN.

BALTIMORE, *March 11th*, 1847.

DEAR SIR: I duly received your letter of the 8th instant, but could not obtain the final decision of the committee until to-day. I have now the pleasure to enclose it, and with it the sum of six hundred dollars, which you will distribute according to your suggestions. The other suggestions in your letter, and in the sketch accompanying it, require more consideration; and, for the present, I am unable to give you a definite reply to them.

The committee are entirely sensible of the fidelity of your exertions, and only lament that they could not have produced more satisfactory results. For myself, I can say that our relations have impressed me with a sincere respect for your character; and whether they are to be resumed or not in the future, I tender you my best wishes for your welfare.

I am, dear sir, most respectfully,
Your obedient servant,
(Signed) LOUIS McLANE.

A. J. MARSHALL, Esq.,
Richmond, Va.

And then rested their case.

And thereupon the plaintiff prayed the court to instruct the jury as follows:

A. J. MARSHALL
vs.
THE BALTIMORE & OHIO RAILROAD COMPANY. } Plaintiff's prayers.

Plaintiff's prayers.

The plaintiff, by his counsel, prays the court to instruct the jury as follows:

1. That there is nothing in the terms or provisions of the agreement, embraced in the resolution of the committee of correspondence,

dated 12th December, 1846, offered in evidence, which renders the same void, on grounds of public policy.

2. That the plaintiff is not precluded from recovering under the agreement aforesaid, dated 12th December, 1846, as modified by the agreement stated in the letter of 11th February, 1847, by reason merely of the second proviso contained in the first section of the act of 6th March, 1847, which has been offered in evidence, provided the jury shall find that the route, entering the ravine of the Ohio river at the mouth of Fish creek, and running so as to pass from a point in the ravine of Buffalo creek, at or near the mouth of Pile's Fork, to a depôt to be established by the defendant on the northern side of Wheeling creek, in the city of Wheeling, upon minute estimates made in the manner and on the basis prescribed in said act, and made after full examination and instrumental surveys of the feasible or practicable routes, appeared to be the cheapest upon which to construct, maintain, and work said railroad; and provided they shall also find that the city of Wheeling did not agree to pay the difference of cost, as specified in said act, but, on the contrary, renounced the right to do so as early as the 10th of July, 1847; and provided they shall also find that said act was accepted by the stockholders of the defendant, as a part of its charter on the 25th August, 1847.

3. Upon the evidence aforesaid, the plaintiff prays the court to instruct the jury—

That if they find the contract contained in the resolution of the committee of correspondence of 12th December, 1846, and in the resolution of the committee of correspondence of the 18th January, 1847, and in the letter of Louis McLane of the 11th February, 1847, aforesaid, to have been made with the plaintiff by the defendant; and also that the act of Virginia of the 6th of March, 1847, was passed at the session of the legislature of Virginia for 1846–1847, in the contract mentioned; and also that the Baltimore and Ohio railroad, by the cheapest route to the city of Wheeling, entering the ravine of the Ohio at or north of Grave creek, was ascertained, by such estimates as the law prescribed, to be more costly to construct, maintain, and work, than said road would be by the route passing into the ravine of the Ohio at or near the mouth of Fish creek, and then to the city of Wheeling, and that the difference of said probable cost was then in like manner ascertained; that the defendants accepted the said law within six months from the passage thereof; and also, that when the difference of probable cost between said two routes was ascertained, according [to] said act, the city of Wheeling did not agree to pay to the defendant such difference of cost by the time specified in said act, and that the plaintiff did attend at Richmond during the session aforesaid, and did then and there superintend and further the applications and other proceedings to obtain the right of way through the State of Virginia on behalf of the defendant, then the plaintiff is entitled to recover, on the special contract contained in the instrument aforesaid, the value of the contingent compensation therein stipulated.

And the defendants prayed the court to instruct the jury as follows:

ALEXANDER J. MARSHALL
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY.

Defendants' prayers.

Defendants' prayers.

1. The defendants, by their counsel, prayed the court to instruct the jury that the plaintiff was not entitled to recover, because the contract which stipulated for the payment of a contingent fee of $50,000, in the event of the obtaining from the legislature of Virginia such a law as is described therein, was against public policy, and void.

2. That if the jury shall believe that it was agreed between the parties to the said contract that the same should be kept secret, either in the terms of it or otherwise, from the legislature of Virginia or the public, such contract, if otherwise proper and legal, was invalid as against public policy, and the plaintiff is not entitled to recover.

3. If the jury find that the special contract offered in evidence by the plaintiff was proposed to be entered into by plaintiff from the reasons and motives, and to be executed by him in the way suggested in his communication of the 17th November, and its enclosure, offered in evidence by the defendant, (if the jury shall find that such communication was so made by plaintiff,) and if they shall find that the contract aforesaid was entered into accordingly, and that said contract, or plaintiff's agency under it, was not made known to the legislature of Virginia, but in fact concealed, that then said contract was illegal and void, upon grounds of public policy.

4. That the contract between the plaintiff and defendants of 12th December, 1846, looked to the obtaining of a law authorizing the defendants to extend their road through the State of Virginia, to a point on the Ohio river as low down the river as Fishing creek, which law should be afterwards accepted by the defendants with a determination to act under it, or to the incorporation of an independent company, which the defendants should determine to accept and adopt, or of whose charter they should become the proprietors, authorizing the construction of a railroad from any point on the Ohio river between the mouth of Little Kenawha and Wheeling, and that, no such law having been obtained, the plaintiff is not entitled to recover.

5. That the modified contract of the 11th of February looked to the obtaining of the passage of Hunter's substitute, with the adoption of Fish creek, instead of Fishing creek, as the point of striking the Ohio. That the law which was passed on the 6th of March, 1847, was a law which did not, in its terms or effect, fulfil the stipulations of the modified agreement of February 11th, 1847.

6. That the acceptance of the law of March 6th, 1847, by the de-

3014.

fendants, even supposing it to be substantially the same as Hunter's substitute, did not entitle the plaintiff to recover, unless the jury should believe that such law was obtained through his agency under the agreement with the defendants.

7. That even if the jury should believe that the law of March 6th, 1847, was obtained through the plaintiff's agency, the plaintiff is not entitled to recover if they shall believe that it was accepted by the defendants in consequence of the waiver, by the city of Wheeling, of the privileges accorded to it therein, and the stipulations contained in the agreement between the city of Wheeling and the defendants of March 6, 1847.

8. That the modified agreement of February 11th, 1847, which made Hunter's substitute, modified as stated in the foregoing prayer, the standard of the law which was to be obtained to entitle the plaintiff to the stipulated compensation, made it necessary that such law should give to the defendants the absolute right to approach the city of Wheeling by way of Fish creek; should release them from the necessity of continuing their road to Wheeling unless the city should, within one year, or the citizens of Ohio county should, in the same time, subscribe $1,000,000 to the stock of the defendants; should enable the defendants to open and bring into use, as they progressed, the sections of their road as they were successively finished; and should authorize the defendants to charge, in proportion to distance, upon passengers and goods taken from Baltimore to Wheeling, should the road be continued to the latter place; while the law that was actually passed made it the right of the defendants to take the Fish creek route, depend upon its being the cheapest, and even then placed the defendants' right to go to Fish creek at the option of the city of Wheeling; made it imperative that Wheeling should be the terminus of the road, without any subscription on the part of herself or others; prevented the opening of any portion of her road west of Monongahela until the whole road could be opened to Wheeling, and obliged the defendant to charge no more for passengers or tonnage to Wheeling than they charged to a point five miles from the river; and that before the defendant accepted the law thus differing from that referred to in the modified agreement of February 11th, 1847, the city of Wheeling waived its control of the route, leaving it to depend upon its comparative cost, agreed to subscribe $500,000 to the stock of the defendants, and provided a depot for the defendants at the terminus of the road; and that the adoption and acceptance of the law of March the 6th, 1847, thus differing from Hunter's substitute, and induced by the waiver and stipulation of Wheeling already mentioned, and action under it, was not such an acceptance, adoption, and action, as entitled the plaintiff to recover.

9. That if the jury shall believe that the plaintiff received from the defendants the $600 given in evidence in full discharge of his claims for compensation under the agreement in question, then the plaintiff is not entitled to recover.

But the court refused to give the instructions as prayed, by either plaintiff or defendant; but instructed the jury as follows:

A. J. MARSHALL
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY. } Court's instructions.

Court's instructions to the jury.

1. If, at the time the special contract was made upon which this suit is brought, it was understood between the parties that the services of the plaintiff were to be of the character and description set forth in his letter to the President of the railroad company, dated November 17, 1846, and the paper therein enclosed, and that, in consideration of the contingent compensation mentioned in the contract, he was to use the means and influences proposed in his letter and the accompanying paper, for the purpose of obtaining the passage of the law mentioned in the agreement, the contract is against the policy of the law, and no action can be maintained.

2. If there was no agreement between the parties that the services of the plaintiff should be of the character and description mentioned in his letter and communication referred to in the preceding instruction, yet the contract is against the policy of the law, and void, if at the time it was made the parties agreed to conceal from the members of the legislature of Virginia the fact that the plaintiff was employed by the defendant as its agent to advocate the passage of the law it desired to obtain, and was to receive a compensation, in money, for his services in case the law was passed by the legislature at the session referred to in the agreement.

3. And if there was no actual agreement to practice such concealment, yet he is not entitled to recover if he did conceal from the members of the legislature, when advocating the passage of the law, that he was acting as agent for the defendant, and was to receive a compensation, in money, in case the law passed.

4. But if the law was made upon a valid and legal consideration, the contingency has not happened upon which the sum of fifty thousand dollars was to be paid to the plaintiff—the law passed by the legislature of Virginia being different, in material respects, from the one proposed to be obtained by the defendant by the agreement of February 11th, 1847; and the passage of which, by the terms of that contract, was made a condition precedent to the payment of the money.

5. The subsequent acceptance of the law as passed, under the agreement with the city of Wheeling, stated in the evidence, was not a waiver of the condition, and does not entitle the plaintiff to recover in an action on the special contract.

6. There is no evidence that the plaintiff rendered any services, or was employed to render any, under any contract, express or implied, except the special contract stated in his declaration; and as no money

is due to him under that contract, he cannot recover upon the count upon a quantum meruit.

And thereupon the plaintiff excepts, as well to the refusal of his prayers, as to the granting of the instructions aforesaid given; and tenders this his second bill of exceptions, and prays that the same may be signed and sealed by the court, which is accordingly done day of November, 1852.

R. B. TANEY. [SEAL.]

And now here at this day, to wit, the thirteenth day of November, in the year of our Lord one thousand eight hundred and fifty-two, the said Alexander J. Marshall produced to the said circuit court the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, which said writ of error is in the words, and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the United States, for the fourth circuit in and for the Maryland district, greeting: [SEAL.]

Because, in the record and proceedings, as also in the rendition of judgment of a plea which is in the said court before you, or some of you, between Alexander J. Marshall, plaintiff, and the Baltimore and Ohio Railroad Company, defendant, a manifest error hath happened, to the great damage of the said Alexander J. Marshall, as by his complaint appears: we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the [re-] cord and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-one.

THOS. SPICER,
Clerk circuit court.

Issued 13th November, 1852.

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Writ of error—Bond.

Know all men by these presents, that we, Alexander John Marshall, of the State of Virginia, and Joseph C. Wilson, of the city of Baltimore, are held and firmly bound unto the Baltimore and Ohio Railroad Company in the full and just sum of five hundred dollars, lawful money of the United States, to be paid to the Baltimore and Ohio Railroad Company, their certain attorney, successors, or assigns; to which said payment well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this thirteenth day of November, in the year of our Lord one thousand eight hundred and fifty-two.

Whereas at a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-two, the said Baltimore and Ohio Railroad Company, by the judgment of the same court, recovered against the said Alexander John Marshall their costs and charges by them about their defence in that behalf laid out and expended.

And whereas the said Alexander John Marshall hath sued out the said United States of America, for the correcting of errors, and a citation, directed to the said Baltimore and Ohio Railroad Company, citing and admonishing it to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, to show cause, if any there be, why the judgment so as aforesaid rendered, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf.

Now the condition of the above obligation is such, that if the said Alexander John Marshall shall well and truly prosecute with effect his said writ of error, and pay to the said Baltimore and Ohio Railroad Company, its certain attorney, successors or assigns, the costs and charges adjudged unto it by the said circuit court, and also all such damages, costs, and charges, which may be awarded unto said Baltimore and Ohio Railroad Company by the said Supreme Court, in case he shall fail to make good his plea, then the above obligation to be void

and of none effect, otherwise to be and remain in full force and virtue.

A. J. MARSHALL, [SEAL.]
J. C. WILSON. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES W. CHEW,
THO. SPICER, as to J. C. WILSON.

Approved, R. B. TANEY.

The United States of America, to the President and Directors of the Baltimore and Ohio Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December, instant, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, wherein Alexander J. Marshall is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Alexander John Marshall, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Given under my hand and seal, at the city of Baltimore, in the district aforesaid, this fourth day of December, in the year of our Lord one thousand eight hundred and fifty-two.

R. B. TANEY. [SEAL.]

I acknowledge notice of the above citation.

JNO. H. B. LATROBE,
Attorney for appellees.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto [SEAL.] subscribe my name, and affix the seal of the said circuit court, this fifteenth day of January, in the year of our Lord one thousand eight hundred and fifty-three.

THOS. SPICER,
Clerk circuit court.